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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

BAIL HEARING &
INITIAL APPEARANCE

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: MARCH 3, 2006

BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
SPECIAL PROSECUTOR
On behalf of the State of Wisconsin.

RALPH SCZYGELSKI
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

COPY

1 THE COURT: This is in the matter of the
2 State of Wisconsin vs. Brendan R. Dassey.
3 Appearances.

4 MR. KRATZ: The State appears by Calumet
5 County District Attorney Ken Kratz. I'm
6 appearing as special prosecutor in this matter.

7 MR. SCZYGELSKI: Mr. Dassey appears with
8 Ralph Sczygelski.

9 THE COURT: Yeah. This is Case No.
10 06 CF 88. It's set today for an initial
11 appearance, uh, as well as bail, presumably. Uh,
12 Mr. Kratz.

13 MR. KRATZ: That's correct, Judge. The
14 first, uh, item of housekeeping, uh, Judge
15 Willis, uh, had signed an order upon a request to
16 District Attorney Rohrer to have me appointed in
17 this matter as special prosecutor. I have that
18 original form, Judge. I'd ask the Court to place
19 that in the file, if you will.

20 THE COURT: Go right ahead.

21 MR. KRATZ: This is the initial
22 appearance, Judge. This is a time for, um,
23 Mr. Dassey to receive the, um, original Criminal
24 Complaint. It's, uh, my understanding, based
25 upon conversations with Counsel, that he's

1 already received a copy of the Complaint.

2 THE COURT: Is that correct, Counsel?

3 MR. SCZYGELSKI: We have, Your Honor.

4 THE COURT: Have you had an opportunity to
5 review it?

6 MR. SCZYGELSKI: Yes, we have, and we'll
7 waive its formal reading.

8 THE COURT: All right. Um, the next
9 matter, then, would be to set a preliminary
10 examination.

11 MR. SCZYGELSKI: We would normally, Judge.
12 My client and I are waiving that right.

13 THE COURT: You're handing me a waiver
14 form?

15 MR. SCZYGELSKI: I am, Judge.

16 THE COURT: And you went over this with
17 your client?

18 MR. SCZYGELSKI: Yes, I did.

19 THE COURT: Did he appear to understand
20 what he was waiving?

21 MR. SCZYGELSKI: Yes.

22 THE COURT: Mr. Dassey, I'm going to ask --
23 I'm going to show you this form. Is that your
24 signature on the front page?

25 THE DEFENDANT: Yes.

1 THE COURT: Did you have an opportunity
2 to go over it with your lawyer?

3 THE DEFENDANT: Yeah.

4 THE COURT: Did you understand it?

5 THE DEFENDANT: Yeah.

6 THE COURT: Do you understand that under
7 Wisconsin law you are entitled to what is called a
8 preliminary hearing?

9 THE DEFENDANT: Yeah.

10 THE COURT: And at that hearing, the State
11 would have to produce evidence to show that there's
12 probable cause to believe that a felony has been
13 committed and that you have committed a felony. Do
14 you understand that?

15 THE DEFENDANT: Yeah.

16 THE COURT: And by waiving, or giving up
17 your right to a preliminary hearing, you are, in
18 effect, relieving the State of making that proof.
19 Do you understand that?

20 THE DEFENDANT: Yeah.

21 THE COURT: Is it your desire to waive the
22 preliminary hearing?

23 THE DEFENDANT: Yeah.

24 THE COURT: Anybody promised you anything
25 in order to get you to do that?

1 THE DEFENDANT: No.

2 THE COURT: Threaten you in any way?

3 THE DEFENDANT: No.

4 THE COURT: Court is going to find that the
5 waiver of the preliminary hearing is freely and
6 voluntarily given. Uh, accordingly, the Court is
7 going to bind this defendant over for trial.

8 MR. KRATZ: Judge, uh, the State is
9 prepared this morning to file with the Court the
10 original criminal Information. This becomes the
11 official charging document, then, regarding
12 Mr. Dassey. It includes the identical charges as
13 found in the Criminal Complaint. Those including
14 party to the crime first-degree intentional
15 homicide, party to the crime mutilation of a
16 corpse, and party to the crime of first-degree
17 sexual assault. I'm providing Mr. Sczygelski a
18 copy of that Information and I'll provide the
19 Court the original, sir.

20 MR. SCZYGELSKI: I acknowledge receipt,
21 Your Honor.

22 THE COURT: You want the Information to be
23 read, Mr. Sczygelski, or are you going to waive the
24 reading of it and enter a plea?

25 MR. SCZYGELSKI: We'll waive the reading of

1 that, Your Honor. Um, I am concerned that once we
2 complete the arraignment that certain deadlines run.
3 As long as the Court is going to be amenable to
4 flexibility down the road regarding those deadlines,
5 such as change of venue, um, we will be willing to
6 enter a plea of not guilty to all three charges at
7 this time.

8 THE COURT: Well, we can, uh, set a formal
9 arraignment down the line some time. Uh,
10 Mr. District Attorney, any objection to doing that?

11 MR. KRATZ: Judge, uh, I have, uh, no
12 objection to Mr. Sczygelski at this time, uh, noting
13 the reservations of, uh, those, uh, statutory rights
14 that, uh, uh, need to be, uh, implicated at the time
15 of the arraignment, including substitution of, uh --
16 of Judge and others. Uh, if Mr. Sczygelski wishes,
17 then, that, uh, with the reservation of those
18 statutory rights that the matter be set for a -- a
19 continued arraignment at a future date, I have no
20 objection to that procedure.

21 MR. SCZYGELSKI: That sounds --

22 THE COURT: Is that your --

23 MR. SCZYGELSKI: -- fine.

24 THE COURT: Is that your request,
25 Counsel?

1 MR. SCZYGELSKI: That's fine, Judge.

2 THE COURT: Uh, upon agreement of counsel,
3 the Court will do exactly that. We'll have a
4 continued arraignment here. Uh, it's not, uh, an
5 interminable continued arraignment, under -- uh,
6 arraignment, understand, but, uh, we're going to at
7 least, uh, do this in an effort to accommodate
8 the -- the time lines. Now, bail?

9 MR. KRATZ: Judge, we do have a, uh -- a
10 request, uh, regarding, um -- regarding bail. Uh,
11 this is a, uh -- a case, uh, that includes the,
12 um -- as, uh -- as indicated in the Complaint, uh,
13 the homicide, uh, mutilation, and sexual assault,
14 uh, of a young woman, although the defendant is a --
15 16 years of age, uh, this Court understands, as does
16 Mr. Sczygelski, that there is an original adult
17 court jurisdiction, and, therefore, the same bail or
18 bond considerations as set forth in Section
19 969.01(4) apply to Mr. Dassey as would any other
20 defendant.

21 Those, in this case, uh, include the
22 nature, gravity, uh, and number of offenses. The
23 potential penalty that Mr., uh, Dassey faces,
24 which includes a potential life imprisonment, the
25 degree of violence involved, which is, uh, set

1 out, uh, in detail in the, uh -- the Complaint,
2 as well as the character and strength, uh, of the
3 evidence, uh, presented, which includes not only
4 physical evidence but inculpatory statements
5 being made by Mr. Dassey, uh, given, uh, those
6 factors, Your Honor, uh, given the, uh, risk of
7 flight that is inherent, uh, in any, uh, case of,
8 uh, this magnitude, the State is going to request
9 cash bail in the amount of \$250,000.

10 In lieu of Mr. Dassey, uh, uh, being
11 able to post, uh, the \$250,000 cash bail as
12 requested by the State, uh, I am prepared, if
13 necessary, to argue pretrial detention and, um,
14 the nature and place of that detention. That's
15 all I have, Judge. Thank you.

16 THE COURT: Mr. Sczygelski.

17 MR. SCZYGELSKI: Your Honor, as my,
18 um -- As the Court, I'm sure, is well aware, my
19 client has cooperated with the police, and he has
20 provided a lengthy statement, which is the basis,
21 in large part, for what is in the Complaint and
22 for these charges.

23 He is a juvenile. He is a, uh,
24 sophomore at, uh, Mishicot High School. As I
25 understand it, he's a B/C student. Um, he has

1 never been in trouble in high school as far as I
2 know, or any type of school. He has no juvenile
3 record, whatsoever. Certainly no criminal
4 record.

5 He has indicated that -- in his
6 statement to the authorities that this was a
7 result, in large part, of being threatened by
8 Mr. Avery. That this was something that was not
9 done willingly by him.

10 Based upon those circumstances, Your
11 Honor, I think a \$250,000 cash bail is excessive.
12 He does not have those means. Few high school
13 students would. I believe that a far more modest
14 bail would be appropriate. Potentially, even
15 having sign-in conditions, if necessary, to make
16 sure that there's no flight risk. Um, and that,
17 uh, that be done instead.

18 In sum, Your Honor, I believe that this
19 is a case that involves a young man who was
20 threatened by his own uncle. And because of
21 that, uh, this is not somebody who came up with
22 this horrible idea on his own. This is somebody
23 who, uh, himself, and, essentially, has been
24 victimized by Mr. Avery as well. I would ask for
25 a far more modest cash bail, if any. Thank you.

1 THE COURT: Response?

2 MR. KRATZ: Only, Judge, that, uh, as the
3 State, uh, perceives, and, perhaps, without surprise
4 to Mr. Sczygelski or the Court, there is only one
5 victim in this case. That's Miss Halbach. Uh,
6 Mr. Dassey, at least, has, uh, indicated, uh,
7 himself, had opportunities, uh, not only to
8 extricate himself from this situation, but to, uh,
9 assist in, uh -- in, uh, the ultimate, uh,
10 commission, uh, of this crime.

11 With that having been said, uh, the cash
12 bond that I've, uh, recommended I believe to be
13 fair under the circumstances, not excessive.
14 Would ask the Court impose same.

15 THE COURT: All right. Uh, the Court -- So
16 far as the Court knows at this stage, uh, there are
17 a number of items alleged in the Complaint. Whether
18 there was -- was threats of, uh -- of reprisals on
19 the part of another defendant here, I don't know.
20 Uh, District Attorney is correct, under Section
21 938.183, the Court has original jurisdiction -- in
22 adult court, has original jurisdiction of this
23 juvenile because the allegations relate to, uh, a
24 charge under 940.01, first degree intentional
25 homicide, uh, committed after the age of 15 years,

1 and, in that sense, he is to be treated as an adult.

2 There are a number of factors that the
3 Court is supposed to consider in setting bail.
4 Prominent among those factors in this case, based
5 on this very limited record, are:

6 The nature, the number of crimes, the
7 gravity of the offenses, the potential penalties
8 this defendant faces, the degree of violence
9 involved, uh, his involvement in this -- in this,
10 uh -- in these allegations, and the Court
11 believes on -- on all of those factors, uh, a
12 significant bail is warranted in this case, and
13 it will set it at \$250,000 cash. Anything else,
14 gentlemen?

15 MR. KRATZ: Just that, uh, we schedule a
16 status conference, Judge. Or, excuse me, the
17 arraignment. I guess that's the next -- next
18 hearing, uh, to be scheduled. Uh, whether that is
19 to be done at this time or whether at a scheduling
20 or status conference so we can accomplish it at that
21 time as well.

22 THE COURT: Well, I think we have a -- we
23 have informally set a status conference, uh, couple
24 of weeks down the line prior to coming into court
25 today. Let us set the arraignment. Without

1 objection from either counsel, can we use that as
2 the time to set the arraignment?

3 MR. KRATZ: That would be fine, Judge.

4 THE COURT: Okay.

5 MR. SCZYGELSKI: Your Honor, the other
6 issue is that my client, um, can be either placed in
7 juvenile detention or can be placed in an adult, uh,
8 jail, um, if he cannot raise bail, which I doubt
9 that he'll be able to do. I would ask that he be
10 allowed to stay in a juvenile facility, and he would
11 like to be staying here in Manitowoc so he can be
12 close to his family.

13 THE COURT: Mr. District Attorney any --

14 MR. KRATZ: Judge, uh, as long as, uh,
15 whatever facility Mr. Dassey is placed in pretrial,
16 uh, includes a, uh -- a secure facility. Uh,
17 whether it's in, uh, Manitowoc or, uh, elsewhere,
18 uh, is something I don't, uh, have an opinion about.
19 It should be -- of course be a, uh -- a secure
20 facility. And whether he co-mingles with, uh,
21 adults or, uh, other juvenile offenders, uh, the
22 State doesn't have a position about.

23 THE COURT: The Court will order that he be
24 placed in a secure juvenile facility. Uh, I -- I'm
25 reluctant to order whether it be here in Manitowoc

1 or Sheboygan Counties, but it -- it -- whichever
2 place, it -- it's going to be a juvenile facility.

3 MR. SCZYGELSKI: Okay.

4 THE COURT: Anything else?

5 MR. KRATZ: No, Judge. The date of the --
6 the arraignment? The --

7 THE COURT: We were going to set it on the
8 17th.

9 MR. KRATZ: Is that it? March 17 at --

10 THE COURT: Well, no, we were going to have
11 a status conference on March 17 and set the
12 arraignment at that time.

13 MR. KRATZ: So we're not going to do the
14 arraignment on the 17th?

15 MR. SCZYGELSKI: No.

16 THE COURT: We can.

17 MR. SCZYGELSKI: I believe that may be
18 difficult for law enforcement. It will be two
19 courtrooms they'd have to secure, because you're --
20 you're on Mr. Avery's case that same day.

21 MR. KRATZ: That's fine.

22 THE COURT: All right. But it will be
23 shortly thereafter.

24 MR. KRATZ: Seventeenth at one --

25 THE COURT: Fifteen.

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MR. KRATZ: One-fifteen for the status.
That's fine, Judge. Thank you.

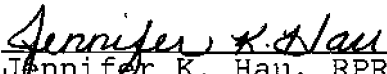
THE COURT: Okay.

(PROCEEDINGS CONCLUDED.)

1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 10th day of March, 2006.

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19 Jennifer K. Hau, RPR
20 Official Court Reporter
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF,

STATUS CONFERENCE &
CONTINUED ARRAIGNMENT

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** MARCH 17, 2006

11 **BEFORE:** Hon. Jerome L. Fox
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ & JEFFREY S. FROEHLICH
15 District Attorney
On behalf of the State of Wisconsin.

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

18 LEONARD D. KACHINSKY
19 Attorney at Law
On behalf of the Defendant.

20 BRENDAN R. DASSEY
21 Defendant
Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Jennifer K. Hau, RPR

25 Official Court Reporter

COPY

1 THE COURT: This is the State of Wisconsin
2 vs. Brendan R. Dassey. It's 06 CF 88. Appearances,
3 please.

4 ATTORNEY KRATZ: Judge, the State
5 appears by Calumet County District Attorney Ken
6 Kratz appointed as lead special prosecutor in the
7 case. Also appearing in court this afternoon are
8 Norm Gahn, Assistant District Attorney from
9 Milwaukee County, having been appointed special
10 prosecutor, and Assistant D.A. Jeff Froehlich
11 from the Calumet County D.A.'s office. Once,
12 again, part of the prosecution team.

13 THE COURT: All right. Defense?

14 ATTORNEY KACHINSKY: And the defendant
15 appears personally with Attorney Len Kachinsky of
16 Appleton.

17 THE COURT: This matter was last before the
18 Court on March 3. Uh, at that time the defendant
19 made an initial appearance. He waived his right to
20 a preliminary examination. An Information was
21 filed. An arraignment was had at which the
22 defendant entered a plea of not guilty. The
23 arraignment was continued for purposes of filing
24 motions.

25 Um, we're here today, and -- and counsel

1 and I have had a -- a brief discussion prior to
2 appearing here today in Court. A discussion in
3 chambers. Uh, Mr. Kachinsky, since you weren't
4 here at the -- at the arraignment, would you like
5 to formally affirm the defendant's not guilty
6 plea?

7 ATTORNEY KACHINSKY: Uh, yes, Your
8 Honor, we would affirm a plea of not guilty.

9 THE COURT: All right. Um, the next thing
10 we need to take care of is a date for a motion that,
11 uh, the defense says it will bring on the issue of
12 suppression of any confession in this matter. Is
13 that correct?

14 ATTORNEY KACHINSKY: Yes, it is, Your
15 Honor.

16 THE COURT: And I have set as the date for
17 filing that motion, April 24, and there will be a
18 hearing on that motion at May 4 at 9:00 a.m. Uh,
19 counsel, you've cleared your calendars so you both
20 can be present on that date?

21 ATTORNEY KRATZ: Yes, Judge.

22 ATTORNEY KACHINSKY: Yes, Your Honor.

23 THE COURT: Is there anything more we need
24 take up today?

25 ATTORNEY KACHINSKY: Uh, no, we filed our

1 motion for a change of venue as, uh, required at the
2 time of, uh, arraignment. We can have a hearing on
3 that at a later time.

4 THE COURT: Okay. Mr. District Attorney?

5 ATTORNEY KRATZ: Judge, I recognize, uh,
6 and affirm the receipt of, uh, that motion for
7 change of venue, and do agree that the scheduling of
8 that motion can be put off until after the, uh,
9 suppression motion's decided.

10 THE COURT: All right. We'll then be
11 adjourned for today.

12 ATTORNEY KRATZ: Thank you, Judge.

13 THE COURT: You're welcome.

14 (PROCEEDINGS CONCLUDED.)
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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.
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19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF, MOTION HEARING
vs. Case No. 06 CF 88
BRENDAN R. DASSEY,

DEFENDANT.

DATE: MAY 4, 2006
BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:

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

LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR
Official Court Reporter

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I N D E X

WITNESSES

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EXHIBITS

MARKED

MOVED

ADMITTED

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3	81	91	91
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1 THE COURT: Good morning. Uh, this is the
2 State of Wisconsin vs. Brendan R. Dassey. It's case
3 No. 06 CF 88. Appearances, please, counsel?

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz appearing
6 as special prosecutor. Also appearing this morning
7 on behalf of the State is Tom Fallon from the
8 Department of Justice.

9 ATTORNEY KACHINSKY: And the defendant
10 appears personally with Attorney Len Kachinsky.

11 THE COURT: This matter was last in court
12 on March 17, 2006, at which time the defendant's
13 continued arraignment was concluded and he
14 reaffirmed his previously entered not guilty pleas.
15 At that time, the Court set today as the date to
16 hear any motions to suppress any statements given by
17 this defendant.

18 On April 19, defendant filed a motion
19 seeking to suppress certain statements which
20 contend, uh -- he contends that these statements
21 were involuntarily given. We are here today to
22 hear that motion.

23 While this is the defendant's motion,
24 the State has the burden of proof to show by a
25 preponderance of the evidence that the statements

1 given were voluntary. The motion that's before
2 the Court today is not directly concerned with
3 the truthfulness or the falsity of the statements
4 given, but, rather, their voluntariness.

5 The Court will render a decision on this
6 motion, uh, May 12 -- Friday, May 12, at
7 9:00 a.m. Gentlemen, any stipulations? The
8 State?

9 ATTORNEY KRATZ: Judge, uh, there are some
10 stipulations that, uh, have been entered into.
11 First of all, the record should reflect that prior
12 to this morning's hearing, the State had transmitted
13 to the Court, uh, several audio and videotapes.
14 They are the subject of the, uh, motions. Although
15 the State is offering the March 1, uh, admission by
16 Mr. Dassey, we've included, uh, those interviews of,
17 uh, February 27, as Mr. Kachinsky included those in,
18 uh, his motion.

19 The, uh, State, uh, is asking, uh -- and
20 I believe the Court has agreed to accept those
21 audio and, uh, videotape, uh, statements -- to
22 have them marked for purposes of this hearing,
23 and to be, uh, placed, uh, in the record at the
24 conclusion of the Court's, uh, decision on May 12
25 to avoid any, uh, possibility of, uh, pretrial

1 publicity that, uh, may adversely affect the, uh,
2 fair trial of this and a related matter.

3 It's my understanding that the Court,
4 uh, has decided to have those, uh, matters or,
5 excuse me, have those, uh, tapes sealed. That
6 is, uh, remained part of the court record;
7 however, without, uh, access to the general
8 public.

9 THE COURT: Uh, Mr. Kachinsky, is -- is
10 that your understanding as well?

11 ATTORNEY KACHINSKY: Uh, it is, Your Honor,
12 and that applies both to, uh, the, uh -- the tapes,
13 uh, electronically preserved evidence, as well as
14 the written summaries of that evidence which the
15 Court also has.

16 THE COURT: All right. The Court will have
17 those marked as an exhibit. It will use the cover
18 letters; one in the case of, uh -- one from the
19 district attorney -- or one from, uh, Mr. Kratz, uh,
20 as the inventory of the exhibit, and one from you,
21 Mr. Kachinsky, relating to the transcript of the
22 February 27 interview.

23 The Court will review those documents in
24 camera, which means in chambers. They will not
25 be part of the -- the public record. And I

1 believe that's the understanding we have -- have
2 here. Is that correct, gentlemen?

3 ATTORNEY KRATZ: That is, Judge. It's also
4 my understanding that, as we sit here this morning,
5 uh, certainly the State, uh, and the defense have
6 reviewed the contents of those audio and, uh, video,
7 uh, representations, and I understand the Court has
8 had some opportunity to review those as well.

9 THE COURT: That is correct.
10 Mr. Kachinsky, any further -- any further
11 stipulations?

12 ATTORNEY KACHINSKY: Uh, that is
13 correct, also, and, uh, I think, as we discussed
14 in chambers, based on the review of those tapes,
15 uh, and the transcripts, and also consultations
16 with my client, investigator, and other
17 witnesses, uh, the question of whether or not
18 this is a custodial interrogation is not, uh, at
19 issue in this case. It's not a custodial, uh,
20 interrogation, although, the, uh, giving of the
21 **Miranda** rights, or failure to do the same during
22 portions of the, uh, statements, would be
23 relevant in determining voluntariness.

24 THE COURT: So, the -- the -- the parties
25 agree that this is not a cus -- uh, custodial

1 interview. And are you referring just to the
2 March 1 or both dates, February 27 and March 1?

3 ATTORNEY KACHINSKY: Both, Your Honor.
4 Because --

5 THE COURT: All right.

6 ATTORNEY KACHINSKY: -- it's not
7 custodial **Miranda**, we're not required to, uh, nor
8 are --

9 THE COURT: So -- so, **Miranda** warnings are
10 not an issue, or Mirandizing is not an issue here,
11 neither is the -- the custodial or noncustodial
12 nature of the -- of the -- of the, uh, interviews.
13 All right. Any other stipulations or anything else
14 we -- we should do here, gentlemen, before we start?

15 ATTORNEY KRATZ: Not before the hearing,
16 Judge, no.

17 THE COURT: From you, Mr. Kachinsky,
18 anything?

19 ATTORNEY KACHINSKY: No, Your Honor, that's
20 it.

21 THE COURT: Proceed, Mr. Kratz.

22 ATTORNEY KRATZ: Thank you, Judge. The
23 State will call Investigator Mark Wiegert to the
24 stand.

25 THE CLERK: Raise your right hand.

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MARK WIEGERT,

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

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

THE WITNESS: Mark Wiegert, W-i-e-g-e-r-t.

DIRECT EXAMINATION

BY ATTORNEY KRATZ:

Q Mr. Wiegert, how are you employed?

A I'm an investigator with the Calumet County Sheriff's Department.

Q How long have you been a police officer?

A About 13-and-a-half years.

Q And how long have you acted in the capacity as and investigator?

A Um, three-and-a-half.

Q What are your general duties as a Calumet County sheriff's investigator?

A To investigate a number of crimes, um, including misdemeanors, felonies, um, and a range from burglaries up to homicides.

Q Investigator Wiegert, uh, were you involved, specifically, with the investigation into the homicide of Teresa Halbach?

A Yes, I was.

1 Q Prior to that investigation, have you had
2 specific training and do you have specific
3 experience in, uh, interview techniques? That
4 is, interviewing witnesses and suspects?

5 A Yes, I do. I've attended, um, numerous classes and
6 trainings on interviews and interrogations.

7 Q How was it that you became involved in this
8 investigation?

9 A Um, I was first notified, I believe it was, on
10 November 3 of '05, of a missing person's report from
11 one of our deputies, and she requested my assistance
12 in, um, the missing person's report.

13 Um, as time went on during that missing
14 person's report, um, after the vehicle was
15 discovered, at that point, um, I was appointed
16 co-lead investigator along with, uh, Special
17 Agent Fassbender from the Department of Justice.
18 Um, after the discovery of the vehicle, I was
19 requested by the Manitowoc County Sheriff's
20 Department to head up the investigation.

21 Q Now, this vehicle, as I understand, was
22 discovered here in Manitowoc County; is that
23 correct?

24 A That's correct.

25 Q And because of at least a perceived conflict that

1 the Manitowoc County Sheriff's Department had,
2 your agency, the Calumet County Sheriff's
3 Department, was named as one of the lead
4 investigating agencies; is that right?

5 A That's correct.

6 Q At the scene of the recovery of the vehicle, uh,
7 as we know, at the Avery salvage property, uh,
8 did you assist in the coordination of the
9 execution of several search warrants at that
10 property?

11 A Yes, I did.

12 Q After coordinating that search effort, uh, were
13 you involved in directing the collection,
14 processing, uh, and later request for analysis of
15 physical evidence found upon that property?

16 A Yes, I was.

17 Q As part of this investigation, also, Investigator
18 Wiegert, were you, uh, involved in
19 decision-making regarding interviews of witnesses
20 and possible suspects, uh, regarding, uh,
21 surrounding criminal activity?

22 A Yes.

23 Q On the 9th of November, 2005, were you involved
24 in an arrest of, and subsequent interview of, a
25 gentleman by the name of Steven Avery?

1 A Yes. Myself, along with Agent Fassbender.

2 Q And after that interview -- after that arrest

3 and, in fact, after several further days of

4 investigation, did you become aware of

5 Mr. Avery's, um, being charged with offenses,

6 including first degree intentional homicide?

7 A Yes.

8 Q Between November and February, 2006, did this

9 investigation continue?

10 A The investigation continued, um, with the numerous,

11 um, interviews during that time period. We also, um,

12 continued with the evidence and, uh, the sending of

13 evidence to the crime lab, the analysis of evidence,

14 talking to experts about the evidence.

15 Q All right. Did you follow up interviews as well?

16 A Yes. We had numerous interviews. Follow-up

17 interviews.

18 Q Are you familiar with, uh, Brendan Dassey?

19 A Yes, I am.

20 Q Is he in the courtroom here this morning?

21 A Yes, he's seated --

22 Q Identify him for the record, please.

23 A Seated at the table to your immediate right, um,

24 wearing a green jumpsuit, uh, next to his attorney.

25 ATTORNEY KRATZ: Judge, would ask that the

1 record reflect Mr. Dassey's identification.

2 THE COURT: It will so reflect.

3 Q (By Attorney Kratz) In spring of, uh, 2006, were
4 you aware of Mr. Dassey's age?

5 A Yes. He would have been, uh, I believe,
6 16-years-old.

7 Q The time of the homicide of Ms. Halbach, were you
8 familiar with where Mr. Dassey lived?

9 A Yes. Um, his exact address, I believe, is 12930-A
10 Avery Road, which would be, um, directly next to, uh,
11 the Steven Avery trailer where Steven Avery was
12 living.

13 Q Were you familiar with his relationship with
14 Mr. Avery?

15 A Yes. It would be, um, Mr. Avery's nephew.

16 Q Prior to, um, the end of February, 2006, had
17 Mr. Dassey been interviewed by any law
18 enforcement officials regarding this
19 investigation?

20 A Yes. He was interviewed, um, initially, in Marinette
21 County by a detective from Marinette County Sheriff's
22 Department. I believe it was Detective O'Neil. Um,
23 there was another interview done by Special Agent
24 Skorlinski and Investigator Baldwin, um, after the
25 interview in Marinette County.

1 Q I believe the records reflect that the Marinette
2 County interview of Mr. Dassey first occurred
3 on -- I think it's the 6th of November? On or
4 about the 6th?

5 A Yes, that's correct.

6 Q And the follow-up interview with Agent Skorlinski
7 and Deputy Baldwin occurred on the 10th; is that
8 right?

9 A Yes.

10 Q Both of these interviews were with Mr. Dassey and
11 law enforcement officials. Were they of the, uh,
12 subject matter, again, uh, relating to and
13 surrounding the disappearance and subsequent
14 homicide of Miss Halbach?

15 A Yes. It was -- They were done to, uh, try to gain
16 more information about that case.

17 Q On February 27, 2006, did you have occasion to
18 re-interview Mr. Dassey?

19 A Yes. Myself and, uh, Agent Fassbender did
20 re-interview Mr. Dassey on the 27th.

21 Q Where did that occur?

22 A Um, it occurred at the, uh, Mishicot High School.

23 Q And what was the purpose of that interview?

24 A It was, again, a -- a fact finding mission, um, to
25 determine what he knew about the case. We had

1 previously learned that he had been, um, near the
2 fire, um, where bones were discovered, so, we wanted
3 to see if he knew any other information about it at
4 that time.

5 Q Describe for the Court the difference between a
6 witness interview and a suspect interview if, in
7 fact, there are any differences?

8 A Well, there's several differences. A witness
9 interview, basically, is when a person is not in
10 custody. They're free to leave. They can stop
11 answering questions at any time. Um, they're treated
12 as somebody who may have information about a case.
13 Or a suspect interview, sometimes they're not free to
14 go. Um, they're sometimes, um, you know more
15 information, you know that they're involved in
16 something, they're treated as that you already know
17 something has occurred and they are involved in it.
18 That's the difference between the two.

19 Q So, these are -- are different kinds of
20 interviews?

21 A Yes.

22 Q They -- They look different? They feel
23 different?

24 A Correct.

25 Q What -- what is, uh, the kind of interview you

1 performed with Mr. Dassey on the 27th of
2 February?

3 A It was a witness interview. Um, he was advised that
4 he did not have to answer any questions. He was
5 advised that he could leave at any time. So, it was
6 a witness interview, not a suspect interview at that
7 time.

8 Q Now, after receiving some information from
9 Mr. Dassey at the high school, was it decided to,
10 um, further, electronically, record that
11 interview?

12 A Uh, yes. Uh, it was initially audiotaped at the high
13 school, um, and after speaking with Mr. Dassey and
14 him providing us a written statement, we decided that
15 we would do a videotape interview of Mr. Dassey, at
16 which time, uh, we did contact Mr. Dassey's mother,
17 um, and she actually came to the school and rode with
18 us to the Two Rivers Police Department where a
19 videotape interview was done of Mr. Dassey.

20 Q During the course of, uh -- or prior to either of
21 these interviews, was Mr. Dassey provided with
22 common -- with what's commonly referred to as his
23 **Miranda** warnings?

24 A Um, prior to the interview that took place at the Two
25 Rivers Police Department, um, Mr. Dassey was given

1 his **Miranda** warnings. Correct.

2 Q Provided you what's been marked for
3 identification as Exhibit No. 1. Could you tell
4 us what that is, please?

5 A Yeah. It's a copy of the City of Two Rivers Police
6 Department's, uh, **Miranda** warnings form.

7 Q That **Miranda** form in -- instructs an individual,
8 uh, that you are interviewing that they have a
9 right not to speak with you. That they have a
10 right to have a lawyer present. And those other,
11 uh, rights that are enumerated on that form; is
12 that right?

13 A That's right.

14 Q And those were all read to Mr. Dassey?

15 A Yes. Mr. Dassey, in fact, signed the, uh, **Miranda**
16 waiver form and also initialed where I read the
17 information to him from that form.

18 Q Mr. Dassey indicate that he was willing to speak
19 with you?

20 A Yes, he did.

21 Q Did that orally and, also, in writing, as shown
22 on Exhibit No. 1; is that correct?

23 A That's correct.

24 ATTORNEY KRATZ: For purposes, and to
25 complete the record in this case, Judge, I would ask

1 the Court receive Exhibit No. 1 at this time.

2 THE COURT: Any objection to that offer?

3 ATTORNEY KACHINSKY: Uh, no, Your Honor.

4 THE COURT: Exhibit is received.

5 Q (By Attorney Kratz) Now, you said that not only
6 did Mr. Dassey agree to being interviewed, but a
7 discussion was held with his mother on that day;
8 is that right?

9 A Yes, we did discuss it with, uh, Brendan's mother,
10 Barb, um, and she actually came to the school and
11 rode with us down to the Two Rivers Police
12 Department.

13 Q Did she agree to allow her son to be interviewed?

14 A Yes. And we, um, actually offered for her to sit in
15 on that interview at the police department, and she
16 had told us that it was not necessary for her to do
17 that at that point.

18 Q How long did that interview take at the, uh, Two
19 Rivers Police Department?

20 A Uh, the best of my recollection, maybe an hour.
21 Somewhere in there.

22 Q What happened after the interview?

23 A Um, Mr. Dassey and -- and Barb were transported over
24 to, actually, um, Fox Hills Resort where we had
25 arranged for a room for them to stay for the night.

1 Q Tell the Judge why you thought that a hotel room
2 was necessary for Barb and her son after that
3 interview?

4 A Well, there were several reasons that we had done
5 that. Uh, number one, was to protect the integrity
6 of the investigation. We wanted to interview the
7 rest of the people who lived out on Avery Road
8 property, and we didn't want Brendan or Barb going
9 back there and giving them information about the
10 previous interview. We wanted to --

11 Q Just -- not that we're going into any details
12 about the September -- excuse me -- the, uh,
13 February 27 interview, but, uh, I understand that
14 there were, uh, some specific details provided by
15 Brendan on the 27th that, um, implicated, uh,
16 Steven Avery in not only homicide, but, uh, the
17 mutilation of the corpse of Teresa Halbach; is
18 that correct?

19 A That's correct. Yes.

20 Q And this was information that you had not
21 received up to that point. In other words, this
22 was new information from, uh, a witness who had
23 now come forward, uh, indicating that he actually
24 saw, uh, some specific, um, things and, uh,
25 relayed some specific evidence to you, again,

1 that you hadn't had up to that point; is that
2 correct?

3 A Yes, that's correct.

4 Q Can you describe that, um, newly discovered
5 evidence as significant?

6 A Very significant, yes.

7 Q And, again, significant enough that you believed
8 that Brendan shouldn't go back to where he was
9 previously living; is that right?

10 A Yes.

11 Q So this Court understands as well, prior to the
12 27th of February, had you been aware of, uh, some
13 attempts -- whether they were veiled or direct
14 attempts -- by Steven Avery and other Avery
15 members to discourage or dissuade witnesses from
16 coming forward with information?

17 A Yes.

18 Q Did, uh, Brendan's mother and Brendan then agree,
19 uh, to, uh, be put up in a hotel that night?

20 A Yes, they did.

21 Q After Brendan's, um, statement, and after your
22 analysis of the information that he had provided
23 to you, uh, did you, um, review some of that
24 information and compare it to some of the
25 physical evidence that you had obtained in this

1 case?

2 A Yes.

3 Q After reviewing some of the things that Brendan
4 told you on the 27th of February, and after
5 considering some of the physical evidence, did
6 you and Investigator Fassbender decide to
7 re-interview Brendan Dassey?

8 A We did, yes.

9 Q When did that interview occur?

10 A That interview occurred on March 1 of 2006.

11 Q Could you tell the Court, please, what the
12 purpose of that interview was?

13 A Well, we had, uh -- After the initial interview that,
14 uh, Mr. Fassbender and myself conducted on Brendan,
15 there were discrepancies in his story, um, from
16 previous interviews as well, and the purpose of that
17 interview on the first, again, was to try to, um,
18 have Brendan come forth with the truth and tell us
19 exactly what he knew. It appeared that there was
20 more things that happened there than -- that Brendan,
21 um, admitted to knowing about.

22 Q Now, on the 1st of March, would you consider that
23 to still be more of a witness interview or was
24 that a suspect interview, at least when it began?

25 A The -- Based on the information that Brendan had

1 provided us on the 27th, we still considered him a --
2 a witness and not a suspect at that time based on the
3 information which he provided.

4 Q As I heard, uh, Investigator Wiegert, there were
5 some details he provided on the 27th that were
6 either inconsistent or what you believed were
7 implausible? Is that a fair statement?

8 A Yes.

9 Q Did you intend on the 1st of March to ask Brendan
10 what he had seen on or about the 31st of October?

11 A Yes. That was the purpose of talking with him.

12 Q Did you intend to ask him what he may have been
13 told by Steven Avery regarding Mr. Avery's
14 involvement in the homicide and related charges?

15 A Yes.

16 Q You had talked about attempts to dissuade
17 witnesses by Steven Avery and others. Had
18 Brendan told you at that point what direction his
19 Uncle Steven had specifically given him regarding
20 cooperation with the police?

21 A Yes. Um, when speaking with Brendan, he had told us
22 that Steve had told him not to talk to the police.
23 Specifically, not to talk to the police.

24 Q On March 1, and prior to the interview with
25 Brendan, did you, again, have, uh, contact with

1 Brendan's mother, Barbara?

2 A Uh, yes, we did. Um, prior to going to the high
3 school on the 1st of March, um, Agent Fassbender had
4 contacted Barb, um, and spoke with her and gained her
5 permission to speak with Brendan at the school, and,
6 also, to take Brendan to the Manitowoc Sheriff's
7 Department for another videotaped interview, and she
8 did give us permission to do that.

9 Q Now, is it your intent, prior to the 1st of March
10 and prior to that interview occurring, that
11 Brendan would be released or that Barb would be
12 able to take Brendan home after that interview?

13 ATTORNEY KACHINSKY: I'm going to object.
14 I think the officer's subjective intent at that
15 point is really not relevant.

16 ATTORNEY KRATZ: I -- If I can be heard,
17 Judge. Uh, the issue of whether it is a custodial
18 interrogation is a factor for this Court to
19 consider. When this officer had a conversation with
20 Barb Janda that he expected after the interview,
21 even, that Brendan was going home, uh, that's as
22 clear a indication as we can have that it was a
23 noncustodial interrogation.

24 THE COURT: Yeah. The objection is
25 overruled. You may answer.

1 THE WITNESS: Yes. Um, in -- When we
2 spoke with, um, Barb on the phone, um, Agent
3 Fassbender informed her that we would bring
4 Barbara -- excuse me -- bring Brendan back to
5 her, um, after the interview was concluded.

6 Q (By Attorney Kratz) All right. So that the
7 Judge is clear, um, when walking into that
8 interview on the 1st of March, not only was this
9 a witness interview rather than a suspect
10 interview, but there were some details, and, as
11 it turns out, some things that developed through
12 this interview that surprised you regarding
13 Brendan's involvement; is that right?

14 A Oh, absolutely. Yes.

15 Q Prior to removing Brendan from school on the 1st
16 of March, did you also have contact with school
17 officials at the Mishicot High School?

18 A Yes. After speaking with Barb, um, Brendan's mother,
19 and gaining her permission, uh, we spoke with the
20 dean of students, um, and informed him of our, um,
21 decision to take Brendan to the sheriff's department
22 for the interview. And we advised the dean of
23 students at that time that, uh, we had gained
24 Brendan's mother's permission to do that.

25 Q Did you make contact, then, with Brendan on the

1 1st of March?

2 A Yes, we did.

3 Q Where did that happen?

4 A Um, it initially happened, um, at the high school
5 office, and we had asked Brendan at that time if he'd
6 be willing to go with us to the Manitowoc Sheriff's
7 Department to do another interview. And, again, we
8 told him that it was going be a videotaped interview,
9 and he agreed to do that.

10 Q While in the, um, squad car -- By the way, uh,
11 whose -- whose vehicle did you -- did you take?

12 A Uh, we had taken, uh, Special Agent Fassbender's
13 unmarked, um, squad car.

14 Q All right. And we call it a squad car, but does
15 it look like a police car?

16 A No. It doesn't have any lights on it. Um, it's got
17 regular license plates on it. You can -- You get in
18 the backseat, you can get out of the backseat. The
19 doors are not secured from the inside. Um, it's just
20 like a regular car.

21 Q While in that regular car, uh, where was Brendan
22 seated?

23 A Brendan was seated in the backseat of that car.

24 Q Was Brendan handcuffed or otherwise restrained?

25 A No, he was not.

1 Q Were the doors locked?

2 A No, they were not.

3 Q While Brendan, uh, was with you, was he advised

4 that he was not in custody and that he, in fact,

5 was free to leave?

6 A Yes, he was.

7 Q Were any guns brandished? In other words, did

8 you take out your weapon? Show your weapon to

9 Brendan or point your weapon at him?

10 A No. As a matter of fact, um, both my weapon, and, I

11 believe, Agent Fassbender's weapon, were covered by

12 jackets, so --

13 Q Prior to having Brendan, um, step into Special

14 Agent Fassbender's vehicle, was he frisked?

15 A No, he was not.

16 Q What is a frisk?

17 A Um, a frisk is when you pat somebody down to check

18 them for weapons, um, to make sure that, uh, they're

19 don't have -- carrying anything that can harm either

20 the officers or the person that we're frisking. Um,

21 we generally do that when somebody's in custody.

22 Q And just so -- so we're clear as to how this

23 looks and feels differently from a suspect

24 interview, if you have a suspect and you take him

25 into custody and you're putting him in the back

1 of your squad car, that person frisked?

2 A Oh, absolutely. I mean, uh, anytime you take
3 somebody into custody, it's -- it's basic police
4 work. You always frisk them. And that was not done
5 that day.

6 Q That didn't happen with Brendan.

7 A No.

8 Q But in a squad car, uh, you still advised Brendan
9 of what's commonly referred to as his **Miranda**
10 warnings. In other words, the same warnings that
11 were provided to him on the 27th; is that
12 correct?

13 A Yes, we did, um, read him his **Miranda** warnings from
14 our **Miranda** warnings form, um, and that was when we
15 started the audiotape also in the squad car.

16 (Exhibit No. 2 marked for identification.)

17 Q I showed you what's been marked for
18 identification as Exhibit No. 2. Could you tell
19 us what that is, please?

20 A Yes, the Calumet County Sheriff's Department Warning
21 and Waiver of Rights form.

22 Q And were those the same rights that were read to
23 Brendan on the 1st of March?

24 A Yes, they were.

25 Q That document appear to be a true and accurate

1 document or copy of the same document that you
2 read to Brendan on the 1st of March?

3 A Yes, it is.

4 Q Again, informing him that he didn't have to talk
5 to you, but he had the right to have a lawyer, he
6 could stop questioning any time, and those other,
7 um, commonly, uh, given **Miranda** warnings; is that
8 right?

9 A Yes.

10 Q Brendan seemed to understand those warnings?

11 A Yes. Brendan, uh, indicated he understood them, and
12 he signed the form, and he also initialed where I
13 read to him from that form.

14 Q By the way, either on the 27th or on the 1st, did
15 Brendan express to you any difficulty in
16 understanding either his rights or the questions
17 that you were asking him?

18 A No. As a matter of fact, um, one of the questions
19 are: Do you understand these rights? And he
20 indicated he understood them.

21 Q And, again, on Exhibit No. 2, Brendan waived
22 those rights and signed that form; is that right?

23 A Yes, he did.

24 Q He agreed to answer your questions both without
25 the assistance of an attorney, again in the squad

1 car, and, also -- I'm fast forwarding just a
2 little bit -- but you renewed or refreshed those
3 rights when you eventually got to the Manitowoc
4 Sheriff's Department; is that right?

5 A Yes.

6 ATTORNEY KRATZ: And, again, Judge, for
7 purposes of this hearing and to complete the record,
8 I'm asking the Court, uh, accept Exhibit No. 2 at
9 this time.

10 THE COURT: Any objection?

11 ATTORNEY KACHINSKY: No, Your Honor.

12 THE COURT: The offered exhibit is
13 accepted. Received.

14 Q (By Attorney Kratz) You said that in the squad
15 car you began electronically recording your
16 interview or your meeting with Brendan; is that
17 right?

18 A That's correct.

19 Q And it was audiotaped, at least in the beginning,
20 from the squad car?

21 A It was audiotaped from the point we got in the squad
22 car all the way 'til we, um, got to the sheriff's
23 department. Actually, we made a stop along the way.
24 We stopped at his house to collect some things and
25 then went from his house to the Manitowoc Sheriff's

1 Department. And the entire time, um, it was
2 audiotaped.

3 Q And so that the Court and everybody else is aware
4 and clear, from the time that you made contact,
5 then, with Brendan in the squad car until the
6 entire interview process was completed, this
7 whole event was electronically recorded; is that
8 right?

9 A Yes, that's correct.

10 Q There wasn't any break in the action, wasn't any,
11 uh, opportunity for you to discuss or to have
12 conversations with Brendan that weren't
13 electronically recorded; is that right?

14 A There's one short break in it, and that is where, um,
15 we got to Mr. Dassey's house where he went into the
16 house with Agent Fassbender and retrieved some items
17 and when -- came back to the squad car. And that
18 lasted, um, probably less than a minute. That's the
19 only time. Other than that, everything was recorded.

20 Q Okay. And so that everybody else and the Judge
21 is clear, there were -- was there any
22 interrogation, interviewing, or questioning of
23 Brendan that occurred during that time other than
24 as related to picking up -- I think, it was his
25 jeans that you were picking --

1 A Yes.

2 Q -- up; is that right?

3 A Yes.

4 Q All right. Now, Investigator Wiegert, while in
5 the squad car while traveling both to Brendan's
6 house and then, also, to the Manitowoc, uh,
7 Sheriff's Department, what kinds of discussions
8 and -- and, uh, conversation occurred at that
9 time?

10 A It was mostly small talk. As -- as -- What I
11 recollect, we had a snowstorm maybe a week prior to
12 that. I know we talked about the snowstorm. Uh, we
13 had talked about whether Brendan had to go to school
14 that day of the snowstorm. I remember him saying
15 that he did go to school that day. That um, Mishicot
16 High School was not called off that day. And it was
17 small talk about things like that. Um --

18 Q Nothing of substance? Or at least nothing as it
19 relates to this investigation --

20 A No.

21 Q -- is that correct? When you, rec -- uh -- when
22 you arrived at the, uh, Manitowoc Sheriff's
23 Department, could you tell us where you went?

24 A Um, when we arrived there, we went up into a
25 interview room on the -- I believe it's the second

1 floor of the sheriff's department, which is in the
2 investigator's area. We went into, uh, what's
3 commonly referred to as a soft interview room.

4 Q What does that mean?

5 A Um, a soft interview room -- generally, what you'll
6 have in there is carpeting, you'll have soft
7 furniture, couches, um, soft chairs, things like
8 that. There's two different types of interview
9 rooms; there's a soft one, there's a hard one. And
10 we chose to use that soft interview room.

11 The hard one generally is -- they don't
12 have carpeting. You have hard chairs, maybe a
13 table. Um, but we used the one with the couches
14 and carpeting in.

15 Q And, again, this was a room that was capable of,
16 uh, supporting a videotaped, uh, statement; is
17 that right?

18 A Yes.

19 Q Again, Brendan was told that the entire interview
20 was going to be videotaped; is that right?

21 A Yes, he was advised of that.

22 Q How many officers were involved in this, uh,
23 interview process?

24 A Uh, during the entire, uh, interview, it was just two
25 of us. Myself and Special Agent Fassbender were the

1 only two that were involved in it.

2 Q So the Court is clear, these were the same two
3 officers involved in the, um, February 27
4 interview; is that correct?

5 A Yes, that's correct.

6 Q Brendan had known both of you. And do you
7 believe on the 27th of February you had gained
8 some familiarity with each other? Some, at
9 least, professional rapport with him?

10 A Yes. Um-hmm.

11 Q The beginning of the interview with Brendan on
12 the 1st of March, was Brendan reminded of the
13 importance to tell the truth?

14 A Yes, he was reminded of that several times.

15 Q Was that a common, uh, strategy? Or at least is
16 that a, uh, common part of, uh, all of your
17 interviews, whether witnesses or suspects?

18 A Yes.

19 Q Seems kind of obvious. Is that the, uh, obvious
20 statement that you give? In other words, you're
21 not hoping that you're going to be lied to; is
22 that right?

23 ATTORNEY KACHINSKY: Objection.

24 Argumentative.

25 THE COURT: Well, I don't know that it's --

1 I don't know that it's argumentative. I don't know
2 that it's relevant either. Uh, but objection's
3 sustained.

4 ATTORNEY KRATZ: That's fine.

5 Q (By Attorney Kratz) What was the length of the
6 interview with Brendan?

7 A Um, on the 1st, um, the length of the interview, I
8 believe -- The interview portion, itself, where we
9 were actually interviewing, not including the breaks,
10 would have been approximately 2 hours and 52 minutes.
11 Somewhere in there. Just short of three hours.

12 Q All right. You had mentioned breaks. Were
13 breaks, uh, offered to Brendan during the course
14 of this interview process?

15 A Yes, um, he was provided with, um, bottled water. At
16 one point he was provided with a soda. At one point,
17 um, he was offered to use the bathroom. Um, he even
18 had a sandwich at one point.

19 Q So, refreshments were not only offered but
20 received by Brendan during this interview; is
21 that right?

22 A Yes.

23 Q And, then, there were also breaks. In other
24 words, it wasn't a -- a continuous questioning
25 session; is that --

1 A No.

2 Q -- right?

3 A No.

4 Q I think we mentioned -- at least we touched on it

5 briefly -- that, uh, during the initial portions

6 of the interview, Brendan was reminded of his

7 **Miranda** warnings, reminded of his opportunity to

8 have an attorney present; is that right?

9 A Yes. Uh, when we first got into the interview room

10 at the sheriff's office, um, I did remind him of his

11 **Miranda** warnings and he agreed at that point to

12 continue talking with us.

13 Q Now, at some point during this interview process,

14 Brendan was also offered an opportunity to speak

15 with his mother; is that right?

16 A Yes.

17 Q And, in fact, that occurred during this

18 interview; didn't it?

19 A Yes, his brother -- his -- his mother, um, Barb, did,

20 uh, present herself at the sheriff's department, was

21 allowed to speak with Brendan.

22 Q At anytime during the course of this, uh, 2-hour

23 and 52-minute, uh, interview, were there any

24 instances of violence? In other words, was

25 Brendan ever, um, struck, or, uh, any violence

1 that came to Brendan during that time?

2 A No.

3 Q Any threats of violence by either you or

4 Investigator Fassbender?

5 A No.

6 Q Were there any threats at all? In other words,

7 was Brendan ever told that if you refuse to talk

8 to us, or if you don't tell us what we want to

9 hear, or anything to that effect, that something

10 bad would happen to him?

11 A No.

12 Q Any forms of, uh, intimidation used with Brendan?

13 In other words, did you or Agent Fassbender ever

14 raise up out of your chair or become physically

15 intimidating towards him?

16 A No, there was nothing like that that occurred. Um,

17 commonly in interviews you'll see the good cop/bad

18 cop roles used. And that wasn't used either. There

19 was none of that.

20 Q Good cops; right?

21 A Both good cops.

22 Q No raised voices at all? At least as far as you

23 can recall?

24 A No.

25 Q Now, obviously, those of us that, uh, have

1 reviewed these, um, tapes -- and -- and,
2 specifically, now, we're talking about March 1,
3 uh, videotapes, since that's the, um, interview
4 that the State's offering in the case, uh, there
5 were points when Mr. Dassey, um, provided you
6 with information that you believed was either not
7 truthful or wasn't the whole truth. Is that a
8 fair statement?

9 A Yes.

10 Q Investigator Wiegert, I'm going to ask you to
11 draw a little bit on your experience. Especially
12 your experience in serious felony investigations.
13 Is it unusual for suspects in serious felony
14 investigations to, perhaps, minimize their
15 involvement or not tell you the complete, um,
16 story or the complete truthful story the first
17 time that you go through that version?

18 A No. Pardon me. No. It's -- it's common. And the
19 more serious -- In my experience, the more serious
20 the crime, uh, the more that it takes for them to
21 tell you that. And, um, they'll give you a lot of
22 untruths, initially. And, usually, the more serious
23 the crime, the more of that you have.

24 Q So, interviewing suspects, at least on serious
25 cases, is, uh -- it's a process. It takes a

1 while; is that right?

2 A Yes.

3 Q You had talked about the more serious the crime,
4 the more reluctant suspects may be to, what's
5 called, inculcate themselves. What that means is
6 that they're more reluctant to, um, confess or to
7 tell you that they were involved; is that right?

8 A Yes, that's correct.

9 Q The subject matter of this interview included
10 homicide; is that right?

11 A Yes.

12 Q It included rape?

13 A Yes.

14 Q Included, uh, some very serious -- in fact,
15 perhaps, the most serious charges we have in the
16 state of Wisconsin; is that right?

17 A Yes, I would say so.

18 Q Investigator Wiegert, during the course -- or
19 prior to Mr. Dassey's, um, explanation to you
20 about his involvement in these crimes, his
21 involvement, uh, in the homicide and related
22 cases, were there any specific promises made to
23 him to encourage his cooperation?

24 A No, he was never promised anything.

25 Q Any promises of leniency?

1 A No.

2 Q Any promises of specific charges he'd be facing

3 if he made statements to you?

4 A No.

5 Q Any promises of specific sentencing

6 recommendations that the D.A.'s office might make

7 at the conclusion of the case?

8 A No.

9 Q You did suggest, uh, Investigator Wiegert, at one

10 point, that he'd feel better once he, uh, in

11 essence, got this story off his chest; is that --

12 is that fair?

13 A That's correct. Yes.

14 Q You believe that to be a true statement?

15 A Yes.

16 Q One of the, uh, specific statements, and I know

17 that Mr. Kachinsky included this in his motion,

18 uh, was that investigators had agreed, uh, if

19 Brendan was honest, if he was cooperative and

20 truthful with you, that, uh, investigators would,

21 uh, I think, the term was, go to bat for him, uh,

22 during this, uh, process; is that right?

23 A Yes, we -- we did say that.

24 Q Was that a truthful statement as well?

25 A Yes, it was.

1 Q Were you willing to do that at the time?

2 A We were and we did.

3 Q And, in fact, just so the Court understands,

4 after Brendan, uh, indicated his involvement in

5 these cases, you and Investigator Fassbender met

6 with me; is that right?

7 A We did, yes.

8 Q To share the details of Brendan's cooperation,

9 with me?

10 A We did.

11 Q Did you advance your opinion to me that Brendan

12 should be provided with some credit, at least, as

13 compared to, perhaps, other actors in this case

14 that haven't taken as much responsibility, that

15 he should be given some credit for his honesty

16 and his remorse?

17 A Yes, we did.

18 Q So, the statement that we'll go to bat for you,

19 uh, not only was a true statement before the, uh,

20 statement was given but, in fact, was fulfilled

21 or followed through by investigators; is that

22 right?

23 A Yes.

24 Q Investigator Wiegert, prior to the March 1

25 interview process, uh, you had, I think,

1 previously mentioned that some, um, physical
2 evidence had been examined and some findings had
3 been made by some experts in the case; is that
4 right?

5 A That's correct. Yes.

6 Q Had you determined, or did you have a reasonable
7 idea, of who was involved in the homicide and
8 surrounding crimes regarding Teresa Halbach?

9 A Well, based on the evidence that we had collected and
10 the evidence that we had examined, and in speaking
11 with the experts who were involved with examining
12 that evidence, we kind of had a good idea who was
13 involved and a basic idea of what had occurred, um,
14 on October 31, yes.

15 Q And just so this Court is, uh -- is aware, and
16 those that might be listening to it, much of the
17 physical evidence that you had obtained at that
18 point had not at that point been made public; is
19 that right?

20 A That's correct.

21 Q And --

22 A And some of it still hasn't been made public.

23 Q In fact, much of it hasn't yet been made public;
24 is that correct?

25 A That's correct. Yes.

1 Q Were you aware at that time, or at least were
2 told by experts as to their opinion, as to the
3 method of homicide? That is, how -- or at least
4 partially -- how, uh, Teresa Halbach was killed?
5 A Yes. At least one of the methods, correct. Yes.
6 Q And, again, that hadn't been made public at that
7 time?
8 A No.
9 Q Were you familiar, and were you told by experts,
10 as to the place of the homicide? That is, the --
11 uh, where some specific evidence was found that
12 suggested that this crime may have been committed
13 in that location --
14 A Um, based --
15 Q -- or locations?
16 A Yes. Yes.
17 Q One of the charges that, uh, Mr. Avery faced at
18 that point included a crime that's called
19 "mutilation of a corpse." Has to do with the
20 disposal, uh, of, uh, a body after a homicide,
21 uh, and the hiding of it for purposes of
22 investigations. Were you given specific
23 information by expert witnesses, uh, as to that
24 particular crime and as to how those things may
25 have occurred?

1 A Yes, we were.

2 Q Now, other than the, um, specific physical
3 evidence that you had received, were you also in
4 a position to draw inferences, not just as an
5 investigator but with the assistance of lots of
6 experts that you spoke with, uh, as to, uh, what,
7 perhaps, motivated this homicide?

8 A Uh, yes, we were.

9 Q And we know now, and I'm going to ask you, on the
10 1st of March, uh, was it an inference and a
11 theory by investigators that this was a, um,
12 sexually-motivated homicide?

13 A Absolutely, yes.

14 Q Consistent with that, Investigator, uh, did you
15 believe that there may be, uh, related charges or
16 related crimes that occurred, including sexual
17 assault, uh, or, uh, being, uh, held against her
18 will or other kinds of related matters?

19 A Yes.

20 Q And those were inferences. Again, not just
21 speculation by you, but consistent with the
22 physical evidence and with what you knew at the
23 time on March 1; is that right?

24 A Correct.

25 Q Finally, Investigator, did you believe that it

1 was possible, or even likely, that Brendan Dassey
2 had seen more than he had previously told you or
3 may, in fact, have been involved at least at some
4 portion of these particular crimes?

5 A Based on the interviews that we have done, based on
6 the, um, evidence which was collected, yes, we did
7 believe that.

8 Q I ask you these questions because during the
9 course of this interview, um, you tell Brendan,
10 or you suggest to Brendan, that, uh, we already
11 know what happened. Uh, was that an expression
12 of not only the physical evidence that you knew
13 at the time, but also these inferences,
14 connecting the dots, if you will, uh, from what,
15 uh, you'd already learned?

16 A Yes, both of those. Um, um, after reviewing and --
17 the evidence which we had collected, and, again,
18 after speaking with the experts about the evidence
19 that was collected, and after they had a chance to
20 examine that evidence, along with the interviews, uh,
21 we had come up with a theory on what had taken place
22 there.

23 Q During the interview of Brendan, or if you
24 believed that Mr. Dassey was not being totally
25 honest with you, were -- was he reminded to,

1 uh -- to remain honest during the -- the
2 interview?

3 A Yeah, he was reminded of that several times.

4 Q Now, there were some details that Mr. Dassey
5 provided you that you didn't know. Or, I mean,
6 in all candor, as you sit here, came to somewhat
7 of a surprise to you; is that right?

8 A Yes.

9 Q Fair to say that that's purpose of interviews?
10 That is, to find stuff out that you don't know
11 yet?

12 A Absolutely. That's why we interview people.

13 Q Now, Investigator Wiegert, to ensure the accuracy
14 or truthfulness of information you're receiving
15 sometimes from either witnesses or suspects,
16 there's a tactic or a strategy which includes
17 providing deliberately false information. That
18 is, providing information about the case that you
19 very well know never happened. That it didn't
20 happen. Are you familiar with that strategy or
21 tactic?

22 A Yes.

23 Q Was that employed in this case?

24 A Yes, it was.

25 Q And, uh, could you describe for the Court why

1 that was used and, uh, what, uh, results you got
2 therefrom?

3 A Well, the reason you do things like that is to, um,
4 see if the witness is going to go along with the
5 false statements or if he's going to stop you and
6 correct you. Um, and when we did that with
7 Mr. Dassey, when we gave him false information, he
8 would deny it, stop us, and he would correct that
9 information. And that the purpose is to make sure
10 that he's not just going along with everything we're
11 saying and to see that he is telling us the truth.
12 And we did that.

13 Q So that would -- could be more specific. And at
14 least what this Court has to determine what's
15 called, uh, demonstrating a free and
16 unconstrained will. If it's -- if you tell
17 somebody something that you know didn't happen in
18 this case --

19 A Uh-hum.

20 Q -- just so the Court understands, and if there's
21 anything secret about this, you had told Brendan
22 that you believed Teresa had a tattoo on her
23 stomach. Remember telling him that?

24 A We did tell him that.

25 Q You knew that not to be true; isn't that right?

1 A We knew that not to be true, correct.

2 Q Rather than just go along with that or just say,
3 oh, yeah, I remember that, or that happened,
4 Brendan told you, I don't remember seeing that --

5 A Yes.

6 Q -- isn't that correct?

7 A That is correct.

8 Q That when provided with, on a couple of
9 occasions, false statements or things that you
10 knew didn't happen, Brendan was able to resist
11 those suggestions or to resist your, um, attempts
12 to just get him to go along with stuff; is that
13 right?

14 ATTORNEY KACHINSKY: Objection. Leading
15 question.

16 ATTORNEY KRATZ: I'm not sure how else to
17 ask it, Judge.

18 THE COURT: Yeah. The objection is
19 sustained. Uh, it -- it -- it's a leading question.
20 Can you reframe it in a nonleading way?

21 ATTORNEY KRATZ: I can certainly try,
22 Judge.

23 Q (By Attorney Kratz) Was Mr. Dassey able, or did
24 he demonstrate the ability to resist these
25 suggestions?

1 A Yes, he did.

2 Q At one point you had suggested to Brendan that,

3 we know that, uh, the gun that was used in this

4 case was in your hands. Do you remember

5 suggesting that to him?

6 A Yes, I do.

7 Q Was he able to resist that suggestion?

8 A Yes, he did. He indicated to us that the gun was

9 never in his hand.

10 Q So, any suggestions, then, that he just went

11 along with whatever it was you were trying to

12 tell him, or that you were putting these words in

13 his mouth, you believe that to be false; is

14 that --

15 ATTORNEY KACHINSKY: Objection.

16 Argumentative. Asks the witness to invade the

17 province of the Court.

18 THE COURT: Well, the questioner is, in

19 effect, testifying here. The objection is

20 sustained. Can we move -- I think I see where

21 you've gone and where you're going. Can we move on?

22 ATTORNEY KRATZ: We certainly can,

23 Judge. I'd be happy to.

24 Q (By Attorney Kratz) Finally, uh, Investigator

25 Wiegert, at anytime during this interview

1 process, uh, did you, uh, employ overly leading
2 questions? That is, did you suggest answers
3 within your questions to Brendan?

4 A No.

5 ATTORNEY KRATZ: For purposes of this
6 hearing, Judge, that's all the questions I have of
7 Investigator Wiegert.

8 THE COURT: All right. Cross?

9 **CROSS-EXAMINATION**

10 BY ATTORNEY KACHINSKY:

11 Q Investigator Wiegert, uh, you're aware, as a
12 result of your professional experience, that
13 there was a decision by the Wisconsin Supreme
14 Court in July of last year that required that
15 suspect interviews of, uh, juveniles be recorded
16 electronically; is that correct?

17 A Yes.

18 Q And is it correct that, uh, after that decision
19 came down, that, uh, you complied with the
20 decision and you electronically record, uh,
21 questioning of suspects when they're juveniles;
22 correct?

23 A Yes, we do.

24 Q Uh, juvenile is defined, for purposes of that
25 particular, uh, decision, as being those, uh,

1 under the age of 18; is that right?

2 A Yes.

3 Q And I think -- and -- and Mr. Dassey was a -- a
4 little bit over the age of 16 at the time of the
5 interviews of February 27 and March 1, 2006; is
6 that right?

7 A Yes.

8 Q Now, it's also not required, however, that
9 interviews of juveniles, where the juvenile is
10 simply a witness to someone else committing a
11 crime, uh, be recorded; is that correct?

12 A That's correct.

13 Q Uh, and, in fact, uh, if an interview of a
14 juvenile occurs, for example, near a crime scene,
15 or in their home, or something like that, uh, and
16 they're not, uh, a suspect in an offense, uh,
17 those typically are still not recorded; is that
18 correct?

19 A I wouldn't say typically, no. Um, we record a lot of
20 interviews whether they're interrogations or not, um,
21 with juveniles now.

22 Q And that's just to be cautious so that in case an
23 interview changes its character that, uh, you're
24 protected and in compliance with that court
25 decision; is that right?

1 A That's correct. Yes.

2 Q Now, you've indicated that, uh, between the time
3 of Mr. Dassey's, uh, first interview with law
4 enforcement regarding this case in November of
5 2005, and, uh, February of 2006, uh, that he was,
6 uh, someone that you thought, uh, would be of
7 interest and might provide more information than
8 he had originally provided; is that right?

9 A That's correct.

10 Q And, in fact, uh, shortly before the February 27,
11 2006, interview, you had some information that
12 Mr. Dassey may have revealed some details
13 involving the offense to a relative of his; is
14 that right?

15 A Yes.

16 Q Um, and it was within a day or two of that that
17 you arranged this, uh, February 27 interview; is
18 that correct?

19 A Yes.

20 Q Um, now, the information that you had
21 specifically from a relative of, uh,
22 Mr. Dassey's, was that, uh, he had seen, uh, body
23 parts in a bonfire near his, uh, residence; is
24 that correct?

25 A Um, along with that he had been losing weight and

1 crying a lot.

2 Q Sure. He was emotionally upset, disturbed,
3 something to that effect?

4 A My understanding.

5 Q Um, now, knowing that there is some information
6 that Mr. Dassey, uh, was aware of the, um,
7 destruction of a -- a human corpse by fire, uh,
8 led you to at least suspect that he might have
9 been involved, uh, in the, uh, disposal of that
10 corpse, uh, by -- in conjunction with Mr. Avery;
11 is that right?

12 A Yes.

13 Q And, in fact, that's the reason why you decided
14 from the beginning of the February 27, uh,
15 interview to, uh, audiotape it; correct?

16 A Uh, no, I would disagree with that. It was, um, to
17 protect him, to protect us, um, because of the -- the
18 enormity of the case, um, we did not want to make any
19 mistakes in the case. And that was the primary
20 reason that we decided to do that.

21 Q Um, now, during the course of the, uh,
22 February 27, 2006, interview, then, at Mishicot
23 High School, Mr. Dassey, uh, gave information
24 regarding some observations he'd made of, uh,
25 human body parts in a bonfire at or near his,

1 uh -- his residence, uh, on Avery Road; is that
2 correct?

3 A Near his residence, yes.

4 Q And when Mr. Dassey, uh, told you that during the
5 interview at, uh, Mishicot High School, uh, that
6 led you to believe that he, at a minimum, might
7 have been involved in, uh, helping Mr. Avery in
8 some way dispose of the corpse of Mr. -- of, uh,
9 Teresa Halbach; is that right?

10 A Well, led us to believe that he observed, you know,
11 her body in the fire. Um, we didn't know at that
12 point whether he had anything to do with helping get
13 the body in the fire.

14 Q But you knew, as a result of your experience,
15 that frequently witnesses, um, to events like
16 that might initially not tell you all the
17 information they knew, and there might be more
18 that, uh, Mr. Dassey knew about the disposal of,
19 uh, body parts than what he had initially
20 provided at the high school; is that correct?

21 A Yes.

22 Q And that's the reason why -- one of the reasons
23 why, when you got over to the, uh, Two Rivers
24 Police Department, you read him his **Miranda**
25 rights; is that correct?

1 A Um, again, because of the enormity of the case is the
2 reason that we read him his **Miranda** rights and to
3 protect him as well.

4 Q Um, now, the **Miranda** rights that you read to
5 Mr. Dassey, uh, did not include any reference as
6 to what offenses, if any, you suspected him of,
7 did -- did they?

8 A No.

9 Q And, in fact, the standard **Miranda** warnings don't
10 contain any sort of, uh, warning to a suspect of
11 the offense that you, uh, believe someone may
12 have committed before you do the interview; is
13 that correct?

14 A That's correct.

15 Q Now, after the -- When you did the videotape
16 interview at the Two Rivers, uh, Police
17 Department, um, Mr. Dassey basically told you
18 the -- the same information he'd told you over at
19 the, uh, high school earlier that day; is that
20 correct?

21 A Uh, essentially the same, yes.

22 Q Now, you've indicated today that the -- the
23 reason you set up the, um, motel room at the, uh,
24 Mishicot hills resort was because you wanted to
25 protect the integrity of the, uh, investigation;

1 is that right?

2 A As I had started, um, explaining earlier, there were

3 two reasons. That was one of them, yes.

4 Q Okay. And there's second reason were you

5 concerned about Brendan possibly harming himself?

6 A Uh, not harming himself as much as maybe somebody,

7 um, on the Avery property harming him after finding

8 out that he had told us information.

9 Q Had you told, uh, Barb Janda, uh, though, that

10 you were concerned about Brendan possibly harming

11 himself?

12 A Oh, I'm sure, yes. I mean, that was, um, an issue,

13 but the -- the bigger issue is we were worried that

14 somebody else would harm him.

15 Q Now, going to the, uh -- the March 21 -- or,

16 excuse me -- the March 1 interview, part of the

17 interview process, uh, both on March 1 and on

18 February 27, was a period of time at the

19 beginning of the interview when you and

20 Mr. Fassbender, uh, made statements to, uh,

21 Mr. Dassey regarding, uh, the purpose of the

22 interview and stressing the needs why, uh, he

23 should cooperate with you and Mr. Fassbender; is

24 that correct?

25 A Yes.

1 Q As a standard technique during questioning to
2 have kind of an initial pep talk with a -- a
3 subject of an interview before going into greater
4 detail as to the events you're interviewing him
5 about; is that correct?

6 A I don't know that I would call it a pep talk, but we
7 do, um, talk to them initially to tell them why we
8 are talking with them and the importance, um, of them
9 being truthful to us.

10 Q And one of the techniques that's, uh, used with
11 suspects of all ages to try to persuade them to,
12 uh, provide you information is to minimize the
13 seriousness of the offenses that you, uh, suspect
14 them of; is that correct?

15 A Yes.

16 Q And in this particular case, uh, one example of
17 that technique that was used was, uh,
18 Mr. Fassbender telling Brendan that he thought,
19 uh, Brendan was all right, did not have to worry
20 about things; is that correct?

21 A Um, I believe that statement was made, yes.

22 Q Uh, there was also a statement I believe you made
23 to Mr. Dassey that you could work through
24 whatever Brendan did; is that right?

25 A Yes.

1 Q You also told him that the honest person's the
2 one who get the better deal out of everything?

3 A Yes.

4 Q Um, these were all made on, uh, March 1; is that
5 right?

6 A I believe so, yes.

7 Q And you had a chance to prepare for this hearing
8 today by reviewing the tapes and the transcripts
9 of the March 1 interview; is that correct?

10 A I have.

11 Q Um -- And there was another statement made to
12 Brendan to the effect, um -- and made by you --
13 that honesty was the only thing that could set
14 him free; is that correct?

15 A Yes, and -- and by that I meant his -- his feelings,
16 um -- He had indicated to us he could not sleep. Um,
17 we had information he had been losing weight. Um, by
18 free, getting the weight off his shoulders. We
19 commonly say that type of thing. We knew he wasn't
20 going to be able to get through this until he
21 admitted it to somebody. It was bothering him,
22 obviously.

23 Q You don't know from your own knowledge, uh, what
24 it -- how it was that Brendan perceived that
25 particular statement, do you?

1 A No.

2 Q Now, after that, um, statement about honesty,
3 concept of the free, Brendan then told you about
4 seeing Mr. Avery and Miss Halbach talking on the
5 porch; uh, is that correct?

6 A Um, it was some time after that. Correct.

7 Q Uh, and you had other information that led you to
8 believe that, um, Mr. Dassey could not have seen
9 Steve Avery and Teresa Halbach talking on the
10 porch, correct?

11 A Uh, based on the other witness' statements, um,
12 people who were there around that time, yes, that's
13 correct.

14 Q Um, and, initially, back in November of 2005,
15 Brendan had made the statement about seeing, uh,
16 Steve Avery and Teresa Halbach talking on the
17 porch; correct?

18 A I really can't answer that question. I'm not sure
19 exactly what was all said during that interview.

20 Q Uh, at some point early in -- in the
21 investigation you'd received information from a
22 person that was claimed to be Brendan Dassey's,
23 uh, bus driver from school who also claimed to
24 have seen, uh, Steve Avery and Teresa Halbach,
25 uh, talking on the porch at the time that, uh,

1 Mr. Dassey was let out of the school bus; is that
2 correct?

3 A I don't recall the, uh, bus driver saying that. I
4 recall the bus driver telling us how she came down
5 and dropped the kids off and saw several vehicles. I
6 don't recall her saying anything about seeing Steve
7 and Teresa talking.

8 Q Now, at another point during the March 1
9 interview, uh, there was a discussion about how
10 Teresa Halbach got in the back of the jeep that
11 was, uh, on Steve Avery's property; is that
12 correct?

13 A Yes.

14 Q And, uh, during the discussion of that, is it,
15 uh, correct that you told Mr. Dassey that if you
16 helped him, referring to Steve Avery, that it was
17 okay because, uh, he, referring to Steve Avery,
18 was telling you to do it?

19 A Yes.

20 Q You also made, uh, assurances to Mr. Dassey that,
21 uh, referring to him as a buddy; is that correct?

22 A Uh, yes.

23 Q Now, before Brendan Dassey told you that he had
24 sex with Teresa Halbach, uh, you made a statement
25 to Mr. Dassey, quote, what happens next? Do you

1 remember? We already know, but we need to hear
2 it from you. It's okay. It's not your fault.
3 What happens next? Is that -- Did you say
4 something to that effect before Mr. Dassey
5 admitted having sex with, uh, Teresa Halbach?
6 A Yes.
7 Q Um, and -- but, as a matter of fact, is it, uh,
8 correct that you really, uh, had nothing at that
9 point, other than a theory, that, uh, Mr. Dassey
10 had, uh, been involved in a sexual assault?
11 A In regards to the sexual assault portion, yes, that's
12 correct.
13 Q Now, the videotaped interview of March 1, uh,
14 2006, you say it took place in what's called a
15 soft-type, uh, interview room at the Manitowoc
16 County Sheriff's Department; is that correct?
17 A That's correct.
18 Q Um, even though it's a so-called soft, uh,
19 interview room, it's still, essentially, a closed
20 off small area; is that correct?
21 A It's a smaller room, yes.
22 Q Uh, during the interview, the door was closed; is
23 that right?
24 A Yes.
25 Q During the interview, there were, uh, three of

1 you in the room; you, Mr. Fassbender, and
2 Mr. Dassey; is that right?

3 A That's correct.

4 Q Uh, during your interviews of, uh, Mr. -- Mr.
5 Dassey, uh, did you ever discuss with him how
6 well he was doing in school?

7 A Um, we -- we discussed school a lot. I don't know
8 that we specifically asked him how well he was doing
9 in school. I -- I don't recall that.

10 Q Uh, did you also check records that were
11 available to you as a law enforcement, uh, person
12 to determine whether or not Mr. Dassey had any
13 prior involvement, uh, with the criminal justice
14 system?

15 A Uh, we did, yes.

16 Q And is it correct that, uh, you -- From those law
17 enforcement records, you discovered that Mr.
18 Dassey had never been, uh, arrested or titled for
19 any sort of, uh, offense?

20 A He was, uh, labeled as a suspect in one offense.
21 However, from reviewing that report, does not appear
22 that he was ever interviewed on that.

23 Q You've indicated that during the interview, um,
24 of March 1, Brendan was allowed to speak to his
25 mother; is that correct?

1 A Yes.

2 Q Now, the point in time during the interview when
3 that occurred was after Brendan had already made
4 statements implicating himself in the homicide,
5 mutilation of a corpse, and sexual assault; is
6 that right?

7 A That's correct.

8 Q And would it be fair to characterize that portion
9 of the interview where Barbara Janda was there as
10 a -- basically a -- a mother saying -- having her
11 last words with her son before he was going to be
12 put into custody?

13 A It was near the end of the interview.

14 Q You've indicated that a couple times during the
15 interview you deliberately provided false
16 information to Mr. Dassey to determine whether or
17 not he was simply, uh, saying things that you
18 expected him or wanted him to say; is that
19 correct?

20 A Yes.

21 Q And one example you've got -- you gave was
22 whether or not, uh, Teresa Halbach had a tattoo;
23 is that correct?

24 A That's correct.

25 Q And the other one was whether or not Mr. Dassey

1 had ever handled a firearm during the offense; is
2 that right?

3 A Yes.

4 Q Were there any other examples, other than that,
5 where you provided, uh, incorrect information to
6 Mr. Dassey to determine whether or not, uh, he
7 was, um, responding to a suggestion or giving you
8 his honest recollections?

9 A Um, those would be the two instances that I can think
10 of. Um, but we would say certain things, he would
11 say, no, that didn't happen, or, yes, that did
12 happen.

13 ATTORNEY KACHINSKY: That's all the
14 questions I have, Your Honor.

15 THE COURT: Any redirect?

16 ATTORNEY KRATZ: Just a few questions.

17 **REDIRECT EXAMINATION**

18 BY ATTORNEY KRATZ:

19 Q Did Brendan ever ask for an attorney?

20 A He did not.

21 Q Brendan ever ask to speak with his mother? Or
22 was he ever denied the chance to speak with his
23 mother?

24 A He was not.

25 THE COURT: That really was two questions;

1 Did he ever ask to speak with his mother and --
2 ATTORNEY KRATZ: Sorry, Judge.
3 THE COURT: Why don't you just ask him
4 as two simple questions.
5 Q (By Attorney Kratz) Did he ever ask to speak to
6 the mother?
7 A No.
8 Q Was he ever denied access to his mother?
9 A He was not.
10 Q Finally, the detail of the version of events, who
11 did the detail come from?
12 A Uh, the detail came from Brendan.
13 Q That detail include his involvement in the
14 homicide?
15 A It did, yes.
16 Q Did it include his involvement in the surrounding
17 crimes as well?
18 A It did, yes.
19 Q Did the detail also involve his Uncle Steven
20 Avery's involvement?
21 A Yes.
22 Q These weren't suggestions by you where he just
23 had to say the word "yes," right?
24 A No, it was not.
25 ATTORNEY KRATZ: All right. That's all for

1 this hearing, Judge.

2 THE COURT: Any recross?

3 ATTORNEY KACHINSKY: Uh, no, Your Honor.

4 THE COURT: You may step down. Do you have

5 any further witnesses?

6 ATTORNEY KRATZ: Uh, not -- not for, uh,

7 our case in chief, Judge, no.

8 THE COURT: I think we'll take about a

9 ten-minute break at this time. We'll be back ten

10 minutes from now. Then we can proceed with the

11 defendant.

12 (Recess had at 10:20 a.m.)

13 (Reconvened at 10:36 a.m.)

14 THE COURT: Mr. Kratz, you have no further

15 witnesses?

16 ATTORNEY KRATZ: I don't, Judge.

17 THE COURT: Mr. Kachinsky.

18 ATTORNEY KACHINSKY: Uh, yes, we'd call to

19 the stand, Barbara Janda.

20 THE CLERK: Would you raise your right

21 hand?

22 **BARBARA JANDA,**

23 called as a witness herein, having been first duly

24 sworn, was examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name and spell your last name for the record.

2 THE WITNESS: Barb Janda, J-a-n-d-a.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY KACHINSKY:

5 Q Okay. Barb, are you related to the person
6 that's, uh -- uh, has a hearing here today?

7 A Yeah.

8 Q Uh, and, uh, what's your relationship to, uh,
9 Brendan Dassey?

10 A He's my son.

11 Q When was, uh, Brendan Dassey born?

12 A October 19 of '89.

13 Q Uh, as of February 27 and March 1 of 2006, how
14 old was Brendan?

15 A Sixteen.

16 Q Um, what school does Brendan attend?

17 A Mishicot High School.

18 Q How long had Brendan been attending school as of,
19 uh, February and March of this year?

20 A In Mishicot?

21 Q Right.

22 A Um, I moved out there in 2001. So, it would be 2001.

23 Q Uh, now, as, uh -- Have you always had, uh,
24 physical placement of, uh, Brendan Dassey?

25 A Yes.

1 Q Uh, uh, were you married at some point to Brendan
2 Dassey's father?

3 A Yes.

4 Q Uh, did that marriage terminate?

5 A Yes.

6 Q Uh, when did that marriage terminate?

7 A Ninety-two.

8 Q Now, um, as -- as Brendan's, uh, parent, have you
9 been apprised from time to time as to his
10 progress in school?

11 A Brendan's a very slow learner. I mean, his grades
12 are really, really bad.

13 Q Uh, has Brendan been subject to, uh,
14 psychological testing in school?

15 A Um, he had some testing done.

16 Q Uh, is -- is Brendan in regular classes in
17 school?

18 A Um, some, I think, and some he's in special ed.

19 Q Um, now, in connection with, uh, the motion that
20 we're bringing in this particular case regarding
21 Brendan Dassen's -- Dassey's statements to, uh,
22 uh, law enforcement officials, uh, are you aware
23 that the issue of his school performance was
24 going to be part of the motion?

25 A Yes.

1 Q In connection with that, did you receive a form
2 for transmittal to the, uh, Mishicot School
3 District, uh, permitting release of information
4 regarding Brendan's, uh, behavioral and, uh,
5 other records from the Mishicot School District?
6 A Yes.
7 Q Did that, uh, authorization for release of
8 information include, uh, release of information
9 not only to me but also to the Court?
10 A Yes.
11 Q And, uh, do you reaffirm, uh, your willingness to
12 permit that information to be released so that
13 this, uh, motion can be fairly decided by the
14 Court?
15 A Yes.
16 Q Um, uh, your observations of Brendan's
17 personality, uh, have you been able to, uh, make
18 any observation regarding whether or not, uh,
19 he's someone that responds readily to suggestions
20 from others?
21 A Usually he does. Um, he's a very shy boy. Um, he
22 doesn't say too much.
23 Q Um, have you been able to make any observations
24 regarding Brendan's, uh, level, of, uh,
25 self-esteem or assertiveness?

1 A Not really.

2 ATTORNEY KACHINSKY: That's all the
3 questions I have.

4 THE COURT: Cross, if any?

5 CROSS-EXAMINATION

6 BY ATTORNEY KRATZ:

7 Q Barb, you remember that, um, since this case
8 began, that Brendan has been subjected to some
9 questioning by police officers; is that right?

10 A Yes.

11 Q In fact -- You have to speak up just a little bit
12 if you can, please. In fact, uh, your whole
13 family, you, your other sons, um, other members
14 of, uh -- of your family have also been
15 questioned; is that right?

16 A Yes.

17 Q And that questioning has occurred, really, since
18 the time that, uh, search warrants were starting
19 to be executed sometime after the 5th of
20 November. Does that sound about right?

21 A Yes.

22 Q And that's really continued through -- well,
23 March 1 when -- when Brendan was interviewed by
24 these officers, uh, but it's maybe even continued
25 after that. You've talked to police after that

1 as well; is that right?

2 A Um, I think once.

3 Q When officers had sought to interview Brendan or
4 your other son, Blain, as an example, would you
5 provide them with permission? Allow them to
6 interview your sons?

7 A Um, my two older ones, they're old enough to do what
8 they want. Um, Blain, they talked to, but I usually
9 went along, and, with Brendan, they more or less
10 didn't want me in there.

11 Q My question, though -- My question to you, Barb,
12 is you had, at least up until March 1, attempted
13 to be cooperative with law enforcement efforts to
14 interview not only yourself but other family
15 members; is that right?

16 A Yes.

17 Q Now, until March 1, were there any questions of
18 threats or promises or intimidation either to
19 yourself or to your sons that you knew about that
20 made you want to stop, uh, cooperating or stop
21 the interviews with your family?

22 A No.

23 Q So, as far as you knew, officers were respectful.
24 I know -- I know the questions were hard and
25 the -- and the topic was difficult to talk about,

1 uh, but you understood that they were doing their
2 job and they were trying to be respectful to you
3 and your family. Is that -- is that a fair
4 statement?

5 A Yes.

6 Q Okay. And prior to March 1, did Brendan ever
7 complain to you how he was treated by any police
8 officers? Prior to March 1.

9 A Not really, no.

10 Q On March 1, then, that's the subject of -- of --
11 of this hearing, officers asked you for
12 permission to interview Brendan at the sheriff's
13 department in Manitowoc. Do you remember that?

14 A Yes.

15 Q And you gave them permission to transport him
16 from the school to the police station; is that
17 right?

18 A Yes.

19 Q Officers invite you to come along? Did they
20 invite you to the police station as well?

21 A No.

22 Q During the interview, itself, were you invited to
23 come to the police station?

24 A The Manitowoc one or the Two Rivers one?

25 Q The Manitowoc one.

1 A No.

2 Q Well, you were there, weren't you?

3 A I was there, yes, but that was after it was all done

4 and over with.

5 Q Okay. How did you get there?

6 A I walked over there.

7 Q Who --

8 A The -- the day that they took him to Manitowoc, I was

9 at the courthouse because I was getting a divorce

10 that day.

11 Q Okay. So, rather than being invited, you just

12 happened to show up at the station; is that

13 right?

14 A I had called them to see if they were done with

15 Brendan or if they had brung him back to school or

16 not and that's when they told me that they had

17 arrested him.

18 Q And at that point you were invited to the

19 station?

20 A Yes.

21 Q You were allowed to meet with Brendan at the

22 station; is that right?

23 A Yes.

24 Q And were you informed at the station, uh, what

25 Brendan had told them? That is, his involvement

1 in these crimes?

2 A More or less, yes.

3 Q And that Brendan had also implicated his Uncle

4 Steve in this murder as well; is that right?

5 Were you told that then?

6 A I don't remember.

7 Q Okay. But you knew that Brendan told the

8 officers that he was involved; right?

9 A That's what they had told me, that he was involved.

10 Q All right. After the interview is over and, in

11 fact, several times since this interview,

12 officers have invited you to watch the tape,

13 haven't they?

14 A Yes.

15 Q And have you done that?

16 A No.

17 Q Barb, the, um, police describe some concerns that

18 they had after Brendan had implicated Steven in

19 this homicide. Concerns about, um, attempts that

20 some family members might make to get Brendan to

21 change his story or to not talk. Do you remember

22 hearing Investigator Wiegert say that today?

23 A Yes.

24 Q Do you recall having that conversation with

25 Investigator Wiegert that you also were concerned

1 about what might happen to Brendan if he went
2 back home to the Avery compound?

3 A On the first?

4 Q Before the first.

5 A I mean --

6 Q The 27th.

7 A -- the 27th?

8 Q Uh-huh.

9 A Um, I had told them that I didn't have to go home. I
10 had other places that I could go.

11 Q My question --

12 A They suggested that I go to Fox Hills.

13 Q My question is: Did you also share with them
14 your concern about what might happen to Brendan
15 if he went back home?

16 A I don't remember.

17 Q You told investigators that day, on the first,
18 and you've told them after that, that Brendan's a
19 honest kid, that he's a truthful kid. Do you
20 remember telling them that?

21 A Yes.

22 Q In fact, I think you used the words, he doesn't
23 lie. Remember saying that?

24 A Yes.

25 Q And you believed, at least up until March 1, that

1 Brendan was truthful and honest, didn't you?

2 A Yes.

3 Q And that when he told people something, when he
4 told authority figures something, he should be
5 believed. You thought that, didn't you?

6 A Yes.

7 THE COURT: Counsel, I'm going to stop you
8 there. Uh, I understand the purposes of your
9 question, but this is a hearing on voluntariness.
10 We're -- we're not -- the -- the -- the truth -- the
11 factual truth of -- of what was -- what was or
12 wasn't uttered there is not the subject of this
13 hearing, so, where are we going with this line of
14 questioning?

15 ATTORNEY KRATZ: Well, Judge, the
16 suggestion will be that he was threatened, or
17 coerced, or promised to say something, uh, that, uh,
18 he either didn't, um, want to say or that there were
19 problems within that. The fact that Brendan was
20 truthful and honest, didn't complain about any
21 coercion, or threats, or the like, I think, is
22 relevant. It isn't for the truth of the -- the
23 underlying statement, Judge.

24 THE COURT: Well, insofar as it goes to
25 the -- the voluntariness, you can ask a couple of

1 more questions, but --

2 ATTORNEY KRATZ: That's all I was going to

3 ask --

4 THE COURT: All right.

5 ATTORNEY KRATZ: -- as -- as to that,

6 Judge. I appreciate that.

7 Q (By Attorney Kratz) You talked about Brendan's,

8 uh, school, and we'll hear from, I think, members

9 of the, uh -- the school hereafter, but,

10 basically, Brendan was in regular classes. You

11 were aware of that, weren't you?

12 A Some of them, yes.

13 Q Brendan was in the process of getting his

14 driver's license, wasn't he?

15 A Yes.

16 Q You have to answer a little louder, please.

17 A Yes.

18 Q And to get your driver's license, you have to

19 take some tests; is that right?

20 A Yes.

21 Q And you, I think, if I remember correctly, have

22 to have a parent sign for you that, uh, indicates

23 that this is a person that is smart enough to get

24 their driver's license and makes good enough

25 decisions to get their license. Did you have to

1 sign something like that?

2 A At -- at the motor vehicle, yes.

3 Q All right. And you, in fact, thought at that

4 time, back, uh, in the fall, that Brendan was

5 mature enough to drive an automobile, didn't you?

6 A Yes.

7 Q You thought he was bright enough, that he was

8 smart enough to understand what went with driving

9 an automobile, didn't you?

10 A Yes.

11 Q Was Brendan on any kind of medications at the

12 time?

13 A No.

14 Q To your knowledge, was Brendan intoxicated or

15 otherwise impaired when he spoke with, uh, law

16 enforcement officers?

17 A No.

18 Q You have a computer at your home; is that right?

19 A Yes.

20 Q Brendan have access to that computer?

21 A Yes.

22 Q Brendan was able to use that computer, to use the

23 internet and, uh, otherwise operate that piece of

24 machinery; is that right?

25 A Yes.

1 Q Do you know if Brendan had any e-mail accounts?
2 If he would e -- use the e-mail?
3 A I couldn't tell you.
4 Q Send messages, or instant messages, or anything
5 like that? Did you know --
6 A MSN.
7 Q -- if he did that or not?
8 A That's about it. MSN.
9 Q And send instant messages?
10 A Yeah, I think that's what it's called, yeah.
11 Q And that's communicating to other people? That's
12 actually typing or writing answers to questions
13 and communicating?
14 A Yes.
15 Q You're aware of that, aren't you?
16 A Yes.
17 Q And Brendan's able to do that; isn't he?
18 A Yes.
19 Q You believe Brendan's able to remember things
20 that happened and tell you what happened? Like
21 when you'd ask what happened at school today,
22 would he answer those questions for you?
23 A Yes.
24 Q He was able to observe things, to process them,
25 to understand them, and then to tell you at least

1 about what happened? That's all true, isn't it?

2 A Yeah. It takes him a while, though.

3 Q Okay. Well, he's not, um, ever been diagnosed as

4 being incompetent or not understanding what's

5 going on in his surroundings, has he?

6 A No.

7 Q You're aware that Brendan also gave a written

8 statement to the police about, um, some of his

9 involvement? Some of the things that he had seen

10 in this case?

11 A I guess so.

12 Q You don't know?

13 A Not really. I don't know too much.

14 Q All right. At school, would Brendan have to

15 write things out, whether it was homework, or

16 some papers, or theme papers? Or, at least, um,

17 homework was in a written form for Brendan; isn't

18 that right?

19 A Yes.

20 Q He was able to do that?

21 A Honestly, I couldn't really tell you because he never

22 brung any homework home.

23 Q Finally, Miss Janda, um, March 1, after the

24 interview, was it your expectation that Brendan

25 would be coming home with you? In other words,

1 um, did the officers believe that after that
2 statement was given, you'd be able to take him
3 home with you?

4 ATTORNEY KACHINSKY: Objection. That asks,
5 uh, something that this witness would have no
6 knowledge as to what the officers believed. She
7 might know what the officers told her.

8 ATTORNEY KRATZ: I can rephrase that,
9 Judge.

10 THE COURT: Please do.

11 Q (By Attorney Kratz) Did the officers tell you
12 that after the interview that Brendan would be
13 going home with you?

14 A Yes.

15 Q Did they then also tell you that it was because
16 of his admissions, because the details that he
17 gave that day, that he couldn't go home? That
18 they weren't going to allow him to go home?

19 A Yes.

20 ATTORNEY KRATZ: Thank you, ma'am. That's
21 all I have, Judge.

22 THE COURT: Any redirect?

23 ATTORNEY KACHINSKY: Yes.

24 REDIRECT EXAMINATION

25 BY ATTORNEY KACHINSKY:

1 Q On March 1, had the officers contacted you before
2 they removed Brendan from Mishicot High School to
3 take him over to the Manitowoc County Sheriff's
4 Department for an interview?

5 A Yes, they did.

6 Q And was that the time when the officers told you
7 that they expected that Brendan was going to be
8 coming home after the interview?

9 A Yes.

10 Q And, then, later on, when they contacted you
11 after Brendan had made some admissions regarding
12 involvement in the death of Teresa Halbach, is
13 that when they made the contrary statement that
14 they were going to arrest him and he would not be
15 coming home?

16 A Yes.

17 ATTORNEY KACHINSKY: That's all I have,
18 Your Honor.

19 ATTORNEY KRATZ: I have nothing further.
20 Thank you, Judge.

21 THE COURT: You may step down.

22 ATTORNEY KACHINSKY: Uh, we call, uh, Kris
23 Schoen -- Schoenenberger-Gross.

24 THE CLERK: If you would raise your right
25 hand.

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KRIS SCHOENENBERGER-GROSS,

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

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

THE WITNESS: Kris Schoenenberger-Gross,
S-c-h-o-e-n-e-n-b-e-r-g-e-r hypen G-r-o-s-s.

DIRECT EXAMINATION

BY ATTORNEY KACHINSKY:

Q Uh, Kris, by whom are you employed?

A Mishicot School District.

Q What is the nature of your employment there?

A I'm the school psychologist and the coordinator of alternative services.

Q How long have you worked for the Mishicot School District?

A Eight years.

Q Um, have you prepared a resumé of your, uh, educational background and, uh, uh, professional positions?

A Yes.

(Exhibit No. 3 marked for identification.)

ATTORNEY KACHINSKY: May I approach, Your Honor?

THE COURT: You may.

1 Q (By Attorney Kachinsky) I'll show you here
2 what's, uh, been marked as Exhibit No. 3. Is
3 that a copy of your, uh -- your resumé?
4 A Yes.
5 Q And was that prepared for purposes of this
6 hearing today?
7 A Yes.
8 Q Now, in the course of your professional duties as
9 a school psychologist for the, uh, Mishicot
10 School district, um, have you had occasion to
11 deal with, uh, evaluations and, uh, concerns
12 regarding the person that's the defendant in this
13 case, Brendan Dassey?
14 A Yes.
15 Q Um, are you also -- Are you the custodian of his,
16 uh, records in the Mishicot School District?
17 A Yes, I am.
18 Q What kind of records does, uh, the Mishicot
19 School District, uh, maintain on Brendan Dassey?
20 A We have special education records, cumulative
21 records, um, behavioral records.
22 Q Uh, has Brendan Dassey's, uh, mother, Barbara
23 Janda, signed a release permitting those records
24 to be released and information regarding those
25 records to be released for purposes of this court

1 hearing?

2 A Yes, she has.

3 Q Um, uh, now, did you have occasion, uh,

4 personally, to conduct an evaluation of

5 Mr. Dassey for purposes of his, uh, educational,

6 uh, placement and progress?

7 A Yes, in October of 2002.

8 Q Uh, before you I believe is an exhibit, uh,

9 Exhibit No. 4, uh, is that a copy of the report

10 that you prepared as a result of that, uh,

11 evaluation?

12 A Yes, it is.

13 Q Uh, and is everything contained in that report,

14 uh, true and correct to the best of your

15 knowledge and belief?

16 A It is with one exception. There was one word omitted

17 in the final typed version. In the observation

18 section on page 2, the word "eye" was omitted. It

19 should read "direct eye contact."

20 Q Uh, now, in preparing this, uh, report, uh, was

21 this -- how did you, uh, go about doing that in

22 terms of obtaining the information regarding

23 Brendan Dassey?

24 A Um, through the evaluation processes? Is -- is that

25 your question?

1 Q Right.

2 A Okay. Um, it was a reevaluation. So, we reviewed
3 the school records to determine what type of testing
4 was needed, and, um, intelligence testing was one
5 area that we decided we wanted to look at as far as
6 his overall intellectual ability and how he processes
7 information.

8 Q According to the records that, uh, were available
9 to you in preparing that evaluation, was -- when
10 was the first time that Brendan Dassey was
11 evaluated for purposes of a school district?

12 A Um, his initial evaluation, first time, was in 1996.
13 September of 1996.

14 Q What sort of tests, uh, were used in evaluating,
15 uh, Mr. Dassey's, um, potential performance in
16 school?

17 A Um, and my personal evaluation was done in October of
18 2002. The 1996 and 1999 evaluations were done by
19 other psychologists in the Reedsville School
20 District. Um, but we did do intelligence testing.
21 Ninety-six and '99 they used the Wechsler
22 Intelligence Scale for Children.

23 THE REPORTER: Could you slow down,
24 please?

25 THE COURT: Could you --

1 ATTORNEY KACHINSKY: Oops, slow down.

2 THE WITNESS: Sorry.

3 Q (By Attorney Kachinsky) Okay. Sure. What --
4 what -- what was -- what was the test that was
5 used by the, uh, uh -- by the, uh, Reedsville
6 School District?

7 A The Wechsler Intelligence Scale for Children, Third
8 Edition.

9 Q What does that test, in particular, measure?

10 A It's an intelligence test that measures a student's
11 thinking ability, their ability to problem solve, and
12 reason.

13 Q Uh, what were the res -- Is there a -- a measure
14 of someone's, uh, intelligence and performance
15 known as IQ?

16 A Yes.

17 Q And what does IQ stand for?

18 A Intelligence quotients.

19 Q What does that, uh, mean?

20 A Again, it -- it looks at the student's overall, um,
21 intellectual ability, their ability to think, problem
22 solve, reason, ability to learn.

23 Q Uh, does that particular measure, uh, compare a
24 given -- child of a given age against, uh, his or
25 her peers?

1 A Right. It is -- is based on age. Um-hmm.

2 Q Um, if you were an average -- had average ability

3 in school, what would your, uh, IQ score be?

4 A Anywhere from a 90 to a 109 is an average range.

5 Q Uh, when the tests were conducted of, uh, Brendan

6 in the Reedsville School District in, uh, 1996,

7 uh, what -- what did it indicate in terms of

8 Mr. Dassey's, uh, IQ, uh, verbal performance, and

9 full scale?

10 A May I please refer --

11 Q Sure.

12 A -- to the record? In 1996, Brendan's full scale, his

13 overall IQ was a 74, his verbal IQ was a 65, and his

14 performance IQ was an 87.

15 Q What do those particular measures of Mr. Dassey's

16 IQ indicate in terms of his ability to

17 communicate and to, uh, understand, uh,

18 information?

19 A Um, the -- the overall score is a little less

20 meaningful, because there is such a big split between

21 his verbal and his performance IQ's. The verbal is

22 looking at his ability to think with words and to use

23 his words and verbal skills and problem solving, and

24 that was a well below average, um, score.

25 His performance IQ of an 87 is looking

1 more at visual kinds of tasks, um, and visual
2 reasoning types of things. And that was in a
3 below average to average range.

4 Q Uh, was another evaluation performed on
5 Mr. Dassey in November, 1999, that you were aware
6 of?

7 A Yes.

8 Q And by whom was that evaluation conducted?

9 A Um, that was done by another psychologist in the
10 Reedsville School District.

11 Q Uh, what were the, uh, scores that were noted
12 during the 1999 evaluation?

13 A Uh, the full scale IQ score was a 73, the verbal IQ
14 was a 69, the performance IQ was an 82.

15 Q Uh, was there any significant change, uh, between
16 1996 and 1999?

17 A No. The results are consistent. He shows stronger
18 nonverbal or visual reasoning abilities than his
19 verbal abilities.

20 Q Um, is it, uh, normal for these particular scores
21 to remain fairly consistent over -- over time
22 with, uh, someone who's a student?

23 A Typically, yes. There -- there can be variability
24 but, in general, they tend to stay fairly consistent.

25 Q Uh, now, did you conduct your own evaluation of

1 Mr. Dassey in, uh, October of 2002?

2 A Yes, I did.

3 Q What test did you use to, uh, evaluate Mr. Dassey

4 at that time?

5 A I used a test called the Woodcock-Johnson, Third

6 Edition, tests of cognitive abilities.

7 Q And what, uh, specifically does that test, uh,

8 measure?

9 A It measures his overall intelligence as well.

10 Q Uh, what were the, uh, scores that were obtained

11 in that particular test?

12 A He obtained a general intellectual ability score of

13 78, a verbal ability score of 81, a thinking ability

14 score of 93, and a cognitive efficiency score of 73.

15 Q Now, what does the, uh -- Uh, was there a

16 percentile ranking for those particular, uh, test

17 results?

18 A Yes --

19 Q What is a percentile ranking?

20 A Um, for example, his general intellectual ability

21 percentile rank was a seven. That means that Brendan

22 scored as well as or better than seven out of one

23 hundred students his age.

24 Q Um, so he was in -- could be characterized as

25 being in the top 93 percent of his class?

1 A No. No. Um, showing that he has, um, some delays.
2 That he's, um, on the lower end.

3 Q Um, were the results that you obtained from the
4 Woodstock-Johnson (sic) test that you conducted
5 in October of 2002, um, significantly different
6 in any way than the two previous tests that you
7 testified about from the Reedsville School
8 District?

9 A No. Generally, results are consistent.

10 Q Uh, is, uh, there any reason to believe that, uh,
11 there would be significant changes in
12 Mr. Dassey's, uh, intellectual abilities between
13 October, 2002 and February or March of 2006?

14 A No.

15 Q Um, from your review of Mr. Dassey's, uh, records
16 from the Mishicot School District, uh, and your
17 own evaluation, do you have, uh, any opinion as
18 to what Mr. Dassey's overall cognitive ability
19 is?

20 A Um, Brendan has an -- overall, some delays. Again,
21 it's within a borderline to below average range,
22 intellectually, overall. He does struggle more with
23 the verbal abilities, um, as well as memory. He
24 struggles with short-term memory kinds of tasks.
25 Working memory.

1 He has strengths in the area of visual
2 spacial problem solving. For example, solving
3 puzzles. Um, he had below average to average
4 score in that range, which is thinking ability.
5 And he does better there.

6 There is a range of intelligence with a
7 cognitive disability being the lowest range, and
8 that was formally known as mental retardation.
9 Brendan's scores do not fall within that range.
10 He is not that low.

11 He has been identified with a specific
12 learning disability and, as a result, has needs,
13 um, and delays in the area of reading, written
14 expression, and spelling skills related to his
15 cognitive levels. Um, math is an area of
16 strength for Brendan.

17 Q Based on those scores and your observations of
18 Brendan, does he have a -- how would you describe
19 the difficulty he has, if any, in, uh,
20 communicating information, uh, to others?

21 A Brendan has also been identified with a speech and
22 language impairment, particularly in the area of
23 language. He has difficulties expressing himself,
24 verbally, using his words, as well as understanding
25 some aspects of language. For example, in the school

1 setting, um, understanding some directions, um,
2 without assistance.

3 Um, he also has difficulties in the area
4 of the social aspects of communication, and that
5 would be such as, um, understanding and using
6 nonverbal cues, facial expressions, eye contact,
7 body language, tone of voice.

8 ATTORNEY KACHINSKY: Um, I have no further
9 questions. We'd move Exhibits, uh, 3 and 4 into
10 evidence.

11 THE COURT: Any objection to Exhibits 3 and
12 4?

13 ATTONREY KRATZ: No. That's fine, Judge.

14 THE COURT: Offered and received. May I
15 have those, please? Thank you. Cross.

16 CROSS-EXAMINATION

17 BY ATTORNEY KRATZ:

18 Q Miss Schoenenberger-Gross, can you describe how
19 children within your school district are
20 identified as qualifying for special ed services?

21 A Um, initially a referral would need to be made by a
22 parent or a teacher if there are concerns that there
23 might be delays, and then we would go through an
24 evaluation process, which includes interviews, review
25 of school records, um, formal testing, observations,

1 and then we meet as an IEP team to determine whether
2 or not the student meets the eligibility criteria
3 that's been set by the state to --

4 THE REPORTER: You're going to have to
5 slow down.

6 ATTORNEY KRATZ: Slow down.

7 THE WITNESS: Where should I -- Where
8 should I back up?

9 THE REPORTER: Uh, "student meets the
10 eligibility --

11 THE WITNESS: We determine, as a team,
12 if, um, the student meets the state eligibility
13 criteria for disability, and whether or not the
14 student has a need for special education
15 services.

16 Q (By Attorney Kratz) Okay. As I understand,
17 Brendan was identified, prior to coming to
18 Mishicot High School, as qualifying for special
19 ed services; is that right?

20 A Yes.

21 Q Now, special ed services, um, is not just you get
22 them or you don't. It's a whole continuum or a
23 range of services that can be offered to
24 students; is that right?

25 A Correct.

1 Q Some students have such disabilities or deficits
2 that they can't be in regular classes; is that
3 true?

4 A Correct.

5 Q Was Brendan one of those kids?

6 A No, he was not.

7 Q Some students have such emotional problems that
8 they are in what's called a self-contained
9 setting. Can you tell us what that is?

10 A Um, that would be if the student is, um, completely
11 in a special education classroom and does not go into
12 the regular education classroom at all.

13 Um, you were referring to some students
14 with behavior problems and -- and those would be
15 because of social and emotional behavioral
16 difficulties --

17 THE COURT: Again, you're going to have --
18 you're going to have to slow up.

19 THE WITNESS: Okay.

20 Q (By Attorney Kratz) You said that those would be
21 some emotional or behavioral problems, uh, in
22 addition to some special ed problems that would
23 require them to be what's called self-contained;
24 is that correct?

25 A Correct.

1 Q Was Brendan one of those kids?

2 A No, he was not.

3 Q Brendan was in regular classes; is that right?

4 A He had a combination. He was primarily in regular

5 education classes with, um, a couple of classes that

6 were in the special education classroom.

7 Q Is Brendan at all incompetent?

8 A No.

9 Q Is Brendan mentally retarded?

10 A No, he's not.

11 Q Is Brendan, to your knowledge, psychotic?

12 A Not to my knowledge.

13 Q Does Brendan suffer from ADD or ADHD to your

14 knowledge?

15 A Not to my knowledge.

16 Q Does Brendan have such deficits that he needs to

17 be medicated to your knowledge?

18 A Not to my knowledge.

19 Q Do you have an opinion as to whether Brendan can

20 understand right from wrong?

21 A In the school setting, um, Brendan is a student who

22 typically follows the school rules. He does not tend

23 to get in trouble. Um, so, to me that demonstrates

24 that he does understand right from wrong.

25 Q All right. So, in review of your school records

1 he was able to, if he chose to, follow a code of
2 conduct; is that right?

3 A Yes.

4 Q Do you have an opinion as to whether Brendan has
5 the ability to observe, and process, and recall,
6 and later describe events?

7 A Yes.

8 Q Yes, he -- you have an --

9 A Yes.

10 Q -- opinion or, yes, he does.

11 A Oh, yes. Yes, I -- Yes, I believe that he can.

12 Q Okay.

13 A He does.

14 Q So, there's nothing about Brendan's deficits or
15 lower than average abilities that affect his
16 ability to tell somebody what happened yesterday;
17 is that right?

18 A Right. Correct.

19 Q You said that Brendan's test scores, at least
20 some of them, fall within simply the below
21 average range. Is there a, um -- I think you
22 mentioned the continuum of average and below
23 average, but what comes after that?

24 A As far as with intellectual ability --

25 Q Yes.

1 A -- for example?

2 Q Um-hmm.

3 A Um, there's an average range. Then there would be a
4 below average range. A borderline range. And well
5 below average. Well below average being the area of
6 cognitive disability.

7 Q Okay. Is there something below that?

8 A No.

9 Q Well below average is as low as -- as you go in
10 cognitive ability?

11 A Um-hmm. Lower extreme, well below average. Um-hmm.

12 Q As I understand, Brendan was making progress
13 through high school in some of these areas.
14 Specifically, um, um, socially. His, uh, social
15 skills were improving; is that right?

16 A Um-hmm. He -- as far as he was able to participate
17 in primarily regular education classes throughout the
18 day with his same-aged peers, and that -- in that
19 way, I would say, yes, that he'd made progress. Yes,
20 sir.

21 Q And -- and -- and, importantly, what I'm -- I
22 need to ask you, Miss -- Miss
23 Schoenenberger-Gross, is that he was placed with
24 his peers, with other kids. He was integrated
25 with the rest of these kids at school; is that

1 correct?

2 A Correct. Um-hmm.

3 Q Not every high school student is average; is --

4 is that true?

5 A That is true.

6 Q There's some above average and some below

7 average; is that right?

8 A Correct.

9 Q And although Brendan, um, may have been in the

10 below average range, uh, you're not suggesting

11 that he didn't understand things, or his

12 surroundings, or wasn't able to, uh, be

13 responsive; is that fair?

14 A Yes. Can I clarify something --

15 Q Please do.

16 A -- from a previous question?

17 Q Sure. Uh-huh.

18 A You had asked about, um, whether or not he'd be able

19 to tell you, for example, about his day. Um, to

20 be -- to be clear, yes, he is able to do that. But

21 he does have those communication needs which, um, in

22 the school setting, um, he might not look at you.

23 Those social communications just -- you know, aspects

24 would come into play, um, as far as, you know, when

25 talking with him. But he is capable of remembering

1 what happened and telling you about those things.

2 Q My question is, if he chose to communicate

3 something to you about what had happened before,

4 uh, he would have the ability to do that --

5 A Yes.

6 Q -- is that right?

7 A Yes.

8 Q Now, you haven't watched this videotape? You

9 haven't watched the detail in which he provided

10 to law enforcement about, uh, things that he was

11 involved in, were you?

12 A No.

13 Q And there were no behavior intervention plans

14 with Brendan that were necessary at school, were

15 there?

16 A No.

17 Q This may be something you can or can't answer.

18 And if not, just let me know. But as you or

19 another teacher would see Brendan interacting at

20 school or functioning at school, would he

21 function just like a normal high school kid?

22 A Um, yes. Um, aside from some of the communication

23 differences that you might see. Um, the -- the

24 diminished eye contact, for example, where other kids

25 are typically making eye contact more frequently.

1 But, otherwise, yes.

2 Q Otherwise looks pretty normal --

3 A Yes.

4 Q -- is that right? Okay.

5 ATTORNEY KRATZ: That's all I have for
6 this witness, Judge. Thank you.

7 THE COURT: Any redirect?

8 ATTORNEY KACHINSKY: Um, yes.

9 REDIRECT EXAMINATION

10 BY ATTORNEY KACHINSKY:

11 Q You testified that, uh, Mr. Dassey had problems
12 affecting his short-term memory. How would that
13 affect him in -- in everyday life in terms of his
14 ability to receive events or to communicate
15 regarding them?

16 A Um, specifically, you know, looking at the short-term
17 memory, um, you know, I can speak to it in the school
18 setting as to how that can impact his ability to, um,
19 learn to read and remember, um, and identify letters
20 and -- and the sounds that go with those letters,
21 and -- and words, and as far as getting that
22 information into short-term memory. Um, in everyday
23 life, um, perhaps -- I -- I guess -- I -- I don't
24 want to speak to that. I can't -- I don't feel
25 comfortable being able to answer that.

1 Q And you said that Mr. Dassey had difficulties,
2 uh, in picking up nonverbal cues. If, uh, he's
3 involved in a conversation with a couple of,
4 uh -- of adults in some sort of setting, uh, how
5 would that problem affect his ability to
6 communicate either in terms of, uh, understanding
7 information or being able to provide it to
8 others?

9 A Um, to some of -- I think it's getting beyond my
10 scope, because I'm not a speech and language
11 pathologist who is the person that would specifically
12 be working with Brendan on those aspects.

13 ATTORNEY KACHINSKY: That's all the
14 questions I have.

15 THE COURT: All right. Any, uh -- any
16 recross?

17 ATTONREY KRATZ: No, Judge. Although, uh,
18 I know that Ms. Schoenenberger-Gross had brought,
19 uh, a volume of records with -- with her. I didn't
20 know if Mr., um, Kachinsky intended to complete the
21 record by having those introduced, and I don't have
22 any -- any objection if he's going to do that.

23 ATTORNEY KACHINSKY: Uh, I don't intend to
24 introduce them, Your Honor.

25 THE COURT: Okay. Uh, you may step down.

1 You want to give her those records back?

2 ATTORNEY KACHINSKY: Right.

3 THE COURT: Yeah, why don't you come back

4 here and pick up the records. Do you have any

5 further witnesses, Mr. Kachinsky?

6 ATTORNEY KACHINSKY: No, Your Honor.

7 THE COURT: Uh, gentlemen, I have

8 received -- Go ahead.

9 ATTORNEY KRATZ: Judge, the -- at any

10 hearing, especially at a, um, uh, hearing to

11 suppress statements, there would be the

12 opportunity to call the defendant, Brendan, as a

13 witness. It appears that Mr. Kachinsky is

14 choosing, uh, by a trial strategy or other

15 reason, not to do that. I'd ask the Court to

16 engage in a brief colloquy with Counsel, and,

17 perhaps, even Mr. Dassey as to their choice not

18 to do that. I think we have to complete the

19 record.

20 THE COURT: All right. Uh, Mr. Kachinsky,

21 you heard what Mr. Kratz said; correct?

22 ATTORNEY KACHINSKY: Yes, I have, Your

23 Honor.

24 THE COURT: Yeah. And you know you have

25 the opportunity to call your client at this point

1 should you choose?

2 ATTORNEY KACHINSKY: Uh, yes, I do, and,
3 uh, Mr. Dassey and I have discussed that.

4 THE COURT: You have had ample opportunity
5 to discuss it with him?

6 ATTORNEY KACHINSKY: Yes, I have.

7 THE COURT: He understands that he could
8 offer testimonial information today in this court
9 proceeding?

10 ATTORNEY KACHINSKY: Yes, he does.

11 THE COURT: And, uh, I don't want to invade
12 the lawyer/client relationship, but, presumably, for
13 one reason or another, you are choosing, and he is
14 choosing, not to do that.

15 ATTORNEY KACHINSKY: Correct, Your Honor.

16 THE COURT: All right. I -- I'm not going
17 to make an inquiry of the defendant.

18 ATTORNEY KRATZ: That's fine, Judge.

19 THE COURT: Um, either of you have anything
20 else -- Both of you have submitted a number of,
21 uh -- or submitted in written argument form the
22 various, uh, cases and points of law that you think
23 the Court ought to be relying on here. I certainly
24 never would try to stop lawyers from arguing at the
25 close of any kind of hearing, but, uh, don't feel

1 compelled to. Um, Mr. Kratz?

2 ATTORNEY KRATZ: Judge, I do have a brief
3 argument if the Court would -- uh, would entertain
4 that at this time. I'm certainly prepared if -- if,
5 um -- if the Court prefers --

6 THE COURT: Sure.

7 ATTORNEY KRATZ: -- that we not do that,
8 I can --

9 THE COURT: Well, that's fine, but
10 before -- before you argue, uh, for the record, I'm
11 going to, uh, number as Exhibit No. 5, I think, in
12 this case, we've got four exhibits here, the, uh --
13 the items that we had stipulated to, or that you had
14 stipulated to at the, uh -- at the beginning of this
15 hearing, specifically, Exhibit 5, will consist of
16 the following:

17 A cover letter from Mr. Kratz dated, uh,
18 April 7, 2006.

19 And a cover letter, uh, will be used as
20 an inventory for a number of electronic
21 recordings that accompanied that letter.

22 Uh, additionally, a transcript of --
23 excuse me -- the March 1, 2006, hearing, or -- or
24 interview, rather, with, uh, uh, that transcript,
25 consisted of pages 525 to 677.

1 Uh, Exhibit 5 will be closed out with a
2 cover letter from Attorney Kachinsky dated, uh,
3 April 28, 2006, with the transcript of the, uh,
4 March -- or of the February 27, 2006, interview
5 bearing pages numbered 439 to 512. Anything
6 else?

7 ATTONREY KRATZ: No.

8 THE COURT: Go ahead.

9 ATTONREY KRATZ: Thank you, Your Honor.
10 This is a -- a case that includes a very detailed
11 admission by a young man, uh, inculcating himself in
12 some very serious criminal conduct.

13 When this Court considers the
14 voluntariness of those statements, uh, the
15 Wisconsin and U.S., uh, courts that are based,
16 uh, in Wisconsin law, uh, suggest that the Court
17 need first find some improper police conduct, uh,
18 before the Court even does a balancing of the
19 defendant's personal characteristics.

20 And that becomes, uh, uh, important in
21 this case because the State argues there's
22 absolutely no improper police conduct that has
23 been suggested. Nothing by Mr. Kachinsky in his,
24 brief, uh, or his, uh, response memorandum, nor
25 anything elicited today that would rise to the

1 level of improper police conduct.

2 The interview on March 1 was clearly a
3 witness interview, not a suspect interview. And
4 it wasn't until, as this Court's reviewed that
5 interview, about halfway through, when Mr.
6 Dassey, himself, starts providing some very, uh,
7 disturbing details about, uh, his involvement and
8 Mr. Avery's involvement, uh, that more questions
9 were asked, uh, about that.

10 Some cases involve confessions and
11 admissions, and especially serious cases, even
12 homicide cases, uh, I don't think it's a stretch
13 to say there isn't any real criminal justice
14 advantage or justification, uh, in making those,
15 uh, confessions. And so when the Court wonders
16 why, or considers why, an individual, uh,
17 inculcates themselves, or confesses, or, uh,
18 tells the police that they were involved in real
19 serious behavior, the motive for those
20 confessions become im -- uh, important to
21 understand.

22 There can, of course, be emotional
23 reasons why people confess. I feel guilty, or
24 I'm going to feel better if I'm truthful and I'm
25 confessing about this. A demonstration of

1 remorse.

2 There can be a spiritual or moral reason
3 to confess. The confession being good for the
4 soul type of thing, or, uh, in a very base sense,
5 the practical reason to confess. If a person
6 thinks that the police are going to find out
7 anyway, or they already know what happened, they
8 hope to obtain some practical benefit in
9 cooperation or honesty.

10 But that, uh, number of reasons, or
11 combination of reasons, usually is why we're in
12 these circumstances, uh, in deciding, uh, why an
13 individual confesses. But, again, it's only if
14 those confessions or admissions are the product
15 of improper police pressures, or improper
16 strategies, uh, does the Court need to consider
17 whether that statement should be suppressed as
18 being involuntary.

19 The success in law enforcement's efforts
20 in obtaining truthful versions of events or, in
21 this case, obtaining confessions is what law
22 enforcement does. They try to get to the bottom,
23 uh, of what happened.

24 And, therefore, appellate courts, and
25 circuit courts before them, recognize and that

1 society benefits from sanctioning permissible
2 police strategies when encouraging a suspect to
3 take responsibility, or to allow accountability
4 for, uh -- for these acts.

5 When we compare what happened in the
6 Dassey case to other cases in Wisconsin, other
7 cases that have been sanctioned when deceit has
8 been used in those other cases, when suspects
9 have been lied to, when we've got the good cop,
10 bad cop, uh, strategy, when suspect's been
11 confronted with physical evidence, even when it
12 doesn't exist, or when trickery, uh, occurs when,
13 uh, we invite suspects down to the police
14 station, all of those have been deemed to be
15 permissible. We don't have anything that even
16 approaches those tactics here.

17 When we consider and compare, uh,
18 permissible strategies to what was used here,
19 this is prac -- practically a -- a warm and fuzzy
20 meeting with, uh -- with Mr. Dassey. And I don't
21 mean at all to diminish the seriousness of -- of
22 what happened, but I'm arguing, Judge, it isn't
23 even close. It's not even a close call.

24 There were no threats. There were no
25 violence. There were no specific promises. No

1 promises of leniency. And when Mr. Dassey's
2 expected and told by the officers that he's
3 expected to tell the truth, I think that's just
4 a -- a common statement of what these officers
5 believed would occur.

6 Under all of those circumstances, Judge,
7 when the Court does apply the totality of the
8 circumstances test, again, I believe there isn't
9 any improper police conduct. But should the
10 Court find that there were some subtle pressures
11 used when compared to Mr. Dassey, when compared
12 to his personal characteristics of being almost
13 17, which I would note for the Court in this case
14 includes original adult court jurisdiction, when
15 we consider his education level, his intelligence
16 as being just below average, and, certainly,
17 functioning adequately within a school setting,
18 his physical and emotional condition is not such
19 that, uh, it made anything involuntary.

20 And when he has prior police contacts,
21 when he demonstrates the ability to resist
22 suggestion, when he demonstrates a free and
23 unconstrained will, this Court should and must
24 allow these statements to be admitted. I'm
25 asking the Court deny Mr. Kachinsky's motion to

1 suppress these statements. Thank you, Judge.

2 THE COURT: Any response, Mr. Kachinsky?

3 ATTORNEY KACHINSKY: Um, yes, Your Honor.

4 In determining whether or not Mr. Dassey's statement
5 was voluntary, uh, the Court, as, uh, repeatedly,
6 uh, argued, has to consider the totality of the
7 circumstances and not look at the tactics that were
8 used, uh, in isolation in and of themselves.

9 Uh, certainly under the facts of this
10 case, if the person that was the subject of the
11 interrogation was 43-year-old -- 43 years old
12 instead of, uh, 16 years old, if he had
13 substantial criminal justice, uh, experience
14 instead of having none, uh, if he had average or
15 above average cognitive abilities, uh, instead
16 of, um, below average as documented by school
17 records from Mishicot and the testimony of
18 psychologists, uh, clearly the State would be,
19 uh -- be correct.

20 Of course, the person to meet those
21 opposite characteristics of Mr. Dassey is his
22 uncle, uh, Mr. Avery, but it's not Mr. Avery that
23 was the subject of his interrogation. The
24 subject of the interrogation and the questioning
25 was Brendan Dassey, and the fact that, uh,

1 Detective Wiegert chooses to characterize this as
2 a witness versus a suspect interview is not at
3 all determinative as to whether or not it was,
4 uh, voluntary or not.

5 Certainly, the Court's, uh, seen the
6 tapes, reviewed the transcripts, knows from its
7 own observations this was not the classic third
8 degree sort of, uh, interview that you'd see on,
9 uh -- on TV shows where someone is isolated in a
10 room with a couple of detectives, where there's
11 spotlights and suggestive questioning, and
12 things, uh, of that nature. But this is,
13 instead, uh, much subtler, uh, and, uh, from the
14 results, uh, much more effective means, of
15 interrogation of someone.

16 Uh, and I think it's important to listen
17 to specific wording, and the Court has, uh -- has
18 the benefit of the videotape, and I'm sure has
19 reviewed it and can see the context into which
20 those statements were made to Mr. Dassey on a
21 continuum starting with the 27th of -- of
22 February.

23 I think it's clear that when the police
24 decide to interview, uh, Mr. Dassey on the 27th
25 of February they certainly strongly had at least

1 a theory that he might have been involved in some
2 respects, and, to some extent, Mr. Dassey
3 confirmed that on the 27th when he indicated his
4 observations of seeing body parts in a, uh,
5 bonfire, which would have, at a minimum, perhaps,
6 implicated him in the participation in the
7 burning of a -- burning of a corpse, which is one
8 of the three charges that he's now, uh -- now
9 facing.

10 He was -- Uh, the police, both on
11 February 27, and, to an even greater extent on
12 March 1, uh, minimized the seriousness of the
13 trouble that Mr. Dassey, uh, was in, and not
14 having had any criminal justice experience
15 Mr. Dassey, uh, didn't have any reason to, uh,
16 not -- not believe them. They had -- they said
17 they would be an advocate for him, um, uh, go to
18 bat for him. Well, what, exactly, did that mean?
19 And what expectations did that create in Mr.
20 Dassey as to whether or not he'd be facing the
21 sort of trouble that he's facing, uh, at this
22 time?

23 And the Court, then, makes -- or, excuse
24 me, not the Court. But they make the statement
25 to Mr. Dassey, well, honesty will set you free.

1 The Court has seen the tape, seen the context
2 into which, uh, that particular statement was
3 made, uh, and it's not at all clear that that's
4 a -- a reference to some sort of psychological
5 or, uh, spiritual freedom as opposed to the
6 physical freedom of not being surrounded by
7 police officers even in a soft, uh, interview
8 room and being subjected to questioning about
9 some of the most serious charges that anybody can
10 face, uh, in state of Wisconsin.

11 Um, so we ask the Court to look at all
12 the circumstances of this. Both Brendan's
13 characteristics in terms of his age, uh, his lack
14 of experience with the criminal justice system,
15 uh, and, um, intellectual abilities, as well as
16 the unrealistic, uh, impressions that were
17 fostered upon him by continuous, uh, statements
18 made by both detectives and find that, under
19 those circumstances dealing with the suspect of
20 Brendan's characteristics, that those were, uh,
21 improper by giving him far greater expectations
22 of leniency and favorable treatment than he was
23 entitled to receive, find that those statements
24 were involuntary and should not be admissible at
25 the trial in this case.

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THE COURT: Any response?

ATTORNEY KRATZ: No, Judge, nothing. Thank
you.

THE COURT: All right. Uh, the Court will
render a decision on this motion on May 12 at
9:00 a.m. At that time, or shortly after that, uh,
you have another motion filed here, Mr. Kachinsky,
relating to the property bond, we'll take that up as
well.

ATTORNEY KACHINSKY: Okay.

THE COURT: Uh, any further proceedings
today, gentlemen?

ATTORNEY KRATZ: Not for today, Judge.
Thank you.

ATTORNEY KACHINSKY: No, Your Honor.

THE COURT: All right. We're adjourned.
(PROCEEDINGS CONCLUDED.)

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 29th day of August, 2006.
17
18

19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

DECISION

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: MAY 12, 2006

BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:

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

LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

COPY

1 THE COURT: Morning, counsel, morning
2 ladies and gentlemen. This is 06 CF 88. State of
3 Wisconsin vs. Brendan R. Dassey. Appearances,
4 please.

5 ATTORNEY KRATZ: The State of Wisconsin
6 appears by Ken Kratz, Calumet County D.A.,
7 appearing as special prosecutor.

8 ATTORNEY KRATZ: The defendant appears
9 personally and with Attorney Len Kachinsky.

10 THE COURT: All right. Um, we are here
11 today for a decision on a motion to suppress. Uh,
12 the defendant, Brendan Dassey, has brought this
13 motion requesting that the Court suppress statements
14 he made to Investigator Mark Wiegert with the
15 Calumet County Sheriff's Department and Agent Thomas
16 Fassbender of the Wisconsin Department of Justice.

17 The motion brought contends that the
18 statements made by Brendan Dassey were obtained
19 from him involuntarily and should, under the
20 applicable law, be suppressed. The motion was
21 heard in this courtroom last Thursday, May 4.

22 Court heard testimony from Investigator
23 Wiegert. It heard testimony from the defendant's
24 mother, Barb Janda, and Kris
25 Schoenenberger-Gross, a school psychologist for

1 the Mishicot School District. The Court also
2 received, five exhibits during the course of the
3 hearing.

4 In addition, the Court has read the
5 relevant case law cited by the parties in their
6 briefs as well as a number of other pertinent
7 cases.

8 The Court has also reviewed the DVDs of
9 the interviews, read the transcripts and listened
10 to the audiotapes. The audiotape in the form of
11 a CD. Now, these electronic recordings are all
12 part of Exhibit 5. Based on those exhibits, that
13 testimony, the briefs, and arguments of Counsel,
14 the Court makes the following findings of fact:

15 Number one. The defendant, Brendan
16 Dassey, was born October 19, 1989, and was, at
17 the time of the police interviews in February and
18 March of 2006, 16 years of age.

19 Number two. At the time of the police
20 interviews, he was a student at Mishicot High
21 School enrolled in mostly regular classes, but
22 also in some special education classes. Testing,
23 it disclosed, an IQ level in the low average to
24 borderline range. There is no evidence that he
25 suffered from any emotional disorder which made

1 him unusually susceptible or vulnerable to police
2 pressures.

3 Three. Prior to his interviews which
4 are the subject of this motion, his only known
5 police contacts were on November 6 and
6 November 10, 2005, when he was questioned in
7 Marinette County about Teresa Halbach.

8 Number four. The parties have
9 stipulated to the noncustodial nature of the
10 police interviews with Brendan Dassey on
11 February 27, 2006, and March 1, 2006.

12 Hearing Exhibit No. 1 is a **Miranda**
13 warning and waiver signed and initialed by
14 Brendan Dassey on February, uh, 27, 2006, at
15 3:21 p.m. And Exhibit 2 is a **Miranda** warning and
16 waiver signed and initialed by Brendan Dassey on
17 March 1, 2006, at 10:10 a.m.

18 Number five. Investigator Wiegert and
19 Agent Fassbender met with Brendan Dassey on
20 February 27, 2006, at Mishicot High School at
21 approximately 12:30 p.m. He was told by them
22 that he didn't have to answer any questions and
23 he was free to go whenever he wanted. Exhibit 5,
24 transcript page 440.

25 He was questioned for approximately an

1 hour and was again told he could stop answering
2 questions and could, quote, walk out anytime, end
3 quote. Exhibit five, transcript page 467.

4 At the close of that interview, he gave
5 the investigators a written statement. The
6 investigators both complimented him for giving
7 them a voluntary statement telling him they knew
8 how difficult it was to tell -- tell them the
9 details he divulged. The interview ended at
10 2:14 p.m. He returned to his eighth hour class
11 at Mishicot High School.

12 Number six. At approximately 3:00 p.m.
13 on February 27, 2006, the same day of the earlier
14 interview, Brendan Dassey and his mother, Barb
15 Janda, met with the investigators at Mishicot
16 High School and agreed that Brendan Dassey could
17 do a videotape interview with the Two Rivers
18 Police Department.

19 Ms. Janda was asked if she wanted to be
20 present during the interview. She said it was
21 not necessary. And Brendan Dassey said he did
22 not care if his mother was present or not.

23 After he signed and initialed Exhibit 1,
24 the **Miranda** warnings and waiver, the
25 investigators interview Brendan Dassey about

1 certain events which he claimed occurred on the
2 night of October 31, 2005.

3 The interview lasted approximately 41
4 minutes and was conducted entirely in a
5 conversational tone of voice by the interviewers.
6 At no time during the interview did Brendan
7 Dassey appear visibly stressed or pressured by
8 the questions or conducts -- conduct of the
9 interviewers.

10 Number seven. On March 1, 2006,
11 Investigators Wiegert and Agent Fassbender sought
12 and received permission from Brendan Dassey's
13 mother, Barb Janda, to speak with Brendan. She
14 was to pick him up at the conclusion of the
15 interview. Following her grant of permission,
16 Investigators Wiegert and Fassbender picked up
17 Brendan Dassey at Mishicot High School at
18 approximately 10:05 a.m. and transported him to
19 the Manitowoc County Sheriff's office, stopping
20 on the way at Brendan Dassey's residence so he
21 could retrieve a pair of blue jeans that the
22 investigators wanted for evidentiary purposes.

23 Number eight. The conversation in the
24 car on the way to the sheriff's office was
25 electronically recorded except for the time spent

1 in Brendan Dassey's residence. The three arrived
2 at the sheriff's office at approximately 10:43
3 a.m. and went to a carpeted interview room
4 equipped with videotaping equipment.

5 Shortly after arriving in the interview
6 room and while the videotape equipment had been
7 activated, Brendan Dassey was asked by
8 Investigator Wiegert whether he remembered his
9 **Miranda** rights that had been read to him and
10 whether he still wanted to talk to the
11 investigators.

12 He responded in the affirmative to both
13 questions by saying, quote, yeah, unquote, and
14 nodding his head.

15 Uh, number nine. The interview between
16 Brendan Dassey and the two investigators lasted
17 approximately three hours during the course of
18 which Brendan Dassey made a number of inculpatory
19 admissions. At no time during the interview was
20 Brendan Dassey handcuffed or otherwise physically
21 restrained.

22 On several occasions during the course
23 of the interview the investigators offered soda,
24 water, or food to Brendan Dassey and asked him if
25 he wanted to use the bathroom. Throughout the

1 interview, Brendan Dassey was seated on an
2 upholstered loveseat.

3 Number 10. At various times during the
4 interview the investigators encouraged Brendan
5 Dassey to provide details to them by appealing to
6 his sense of honesty. Quote, honesty here is the
7 thing that's going to help you, end quote.
8 Exhibit 5, transcript page 541.

9 Quote, honesty is the only thing that
10 will set you free, uh, end quote. Exhibit 5, uh,
11 transcript 5 -- page 541.

12 Quote, come on Brendan, be honest. I
13 told you before that's the only thing that's
14 going to help ya here, end quote. Exhibit 5,
15 transcript page 547.

16 Quote, we just need you to be honest
17 with us. Exhibit 5, transcript page 584.

18 These are but a few example of
19 admonitions to be honest made to Brendan Dassey
20 by the investigators. The entire interview,
21 including the admonitions, was done by both
22 investigators in a normal speaking tone with no
23 raised voices, no hectoring, or threats of any
24 kind.

25 Nothing on the videotape visually

1 depicts Brendan Dassey as being agitated, upset,
2 frightened, or intimidated by the questions of
3 either investigator. His demeanor was steady
4 throughout the actual questioning.

5 He displayed no difficulty in
6 understanding the questions asked of him. At no
7 time did he ask to stop the interview or request
8 that his mother or a lawyer be present. Instead,
9 he answered the questions put to him.

10 Sometimes he revised his answers after
11 being prodded to be truthful or being told by his
12 questioners that they knew his answer was either
13 incomplete or untrue and he should be honest.

14 These appeals to honesty made by the
15 interviewers were nothing more than a reminder to
16 Brendan Dassey that he had a moral duty to tell
17 the truth.

18 Number 11. On occasion, the
19 interviewers purported to know details which, in
20 fact, were not true or which represented
21 uncorroborated theories of the crime in which
22 they presented to Brendan Dassey as factually
23 accurate in order to draw information from him.
24 In the context of this interview, the Court finds
25 that this tactic of misleading Brendan Dassey by

1 the interviewers occasionally pretending to know
2 more than they did was neither improper nor
3 coercive because it did not interfere with
4 Brendan Dassey's power to make rational choices.

5 Number 12. No frank promises of
6 leniency were made by the interviews to --
7 interviewers to Brendan Dassey. He was told,
8 quote, we can't make any promises, but we'll
9 stand behind you no matter what you did, end
10 quote. Exhibit 5, transcript page 541.

11 Quote, I want to assure you that Mark
12 and I are both in your corner. We're on your
13 side, end quote. Exhibit 5, uh, transcript page
14 540.

15 Quote, we don't get honesty here. I'm
16 your friend right now, but I gotta -- I gotta
17 believe in you, and if I don't believe in you, I
18 can't go to bat for you, end quote. Exhibit 5,
19 page 547.

20 Quote, we're in your corner, end quote.
21 Exhibit 5, page 547.

22 These and similar statements made by the
23 interviewers were an attempt to achieve a rapport
24 with Brendan Dassey and convince him that a
25 truthful account of events would be in his best

1 interest.

2 Based on those findings of fact, based
3 on the record, the exhibits in this matter, the
4 Court concludes, as a matter of law, the
5 following:

6 Under a totality of the circumstances
7 test, which I'm using here, given Brendan
8 Dassey's relevant personal characteristics as set
9 forth in the previous findings and on the record
10 in this case, the State has met its burden by
11 showing by a preponderance of the evidence that
12 the statements made by Brendan Dassey to
13 Investigators Wiegert and Fassbender, and which
14 are the subject of this motion, were the product
15 of Brendan Dassey's free and unconstrained will
16 reflecting deliberateness of choice. In short,
17 they were voluntary statements.

18 Accordingly, the defendant's motion to
19 suppress these statements is denied. And, I
20 might add as a -- as a footnote or, perhaps, more
21 than a footnote here, the parties stipulated to
22 the fact that this was not -- either of these
23 interviews, the 27th of February, March 1 of
24 2006, were noncustodial interviews.

25 Uh, the Court, after reviewing the

1 record, has determined that even had they been
2 custodial interviews, that the appropriate
3 **Miranda** warnings were given, were understood by
4 this defendant, and, thus, had they been
5 custodial -- had they been custodial interviews,
6 uh, the result, uh, that the statements were
7 voluntary would remain unchanged.

8 Now, uh, Exhibit 5, which I've alluded
9 to in the preface of -- of the findings, as well
10 as during the course of the findings, is, as I
11 noted at the last hearing, uh, an in camera, that
12 means in chambers, uh, exhibit. The Court is
13 going to seal that exhibit, uh, and it will
14 remain sealed until the trial.

15 The Court believes, given the continuing
16 media scrutiny in this matter, that the
17 dissemination of Exhibit 5, uh, would have,
18 conceivably, a tendency to taint a jury pool.
19 It's my understanding -- And, gentlemen, correct
20 me if I'm wrong. First you, Mr. Kratz, you have
21 no objection to proceeding in that fashion?

22 ATTORNEY KRATZ: That's correct, Judge.

23 THE COURT: Mr. Kachinsky?

24 ATTORNEY KACHINSKY: I don't object either,
25 Your Honor.

1 THE COURT: All right. Anything else on
2 this before we move on to -- And I'm going to ask
3 you, Mr. Kratz, to draft the order.

4 ATTORNEY KRATZ: I will -- I will do that,
5 Judge. Uh, Your Honor, I -- I know that the Court
6 was reading from a -- a -- a prepared statement. Is
7 it possible that I can get a copy of that to, uh,
8 amend or attach that to the order, or would the
9 Court just prefer I indicate in the order, for
10 reasons stated on the record.

11 THE COURT: Um, why don't you put, for
12 reasons stated on the record. Or, I suppose, in the
13 alternative, you can ask the already overworked
14 court reporter to -- to type a transcript here.

15 ATTORNEY KRATZ: I won't do that, Judge.
16 I'll just, uh, draft a generic order. That's
17 fine. Thank you.

18 THE COURT: All right. Um, the next item,
19 I believe, Mr. Kachinsky, is yours. It's -- it's a
20 motion. Do you want to be heard on your motion to,
21 uh, revise the terms of -- of the bail?

22 ATTORNEY KACHINSKY: Um, yes, Your Honor.

23 ATTORNEY KRATZ: Judge, before we get into
24 the -- to the merits of that, I -- I wonder if I
25 could be heard just -- just briefly on, uh -- on

1 that, uh -- on that procedure. Um, because the,
2 um -- one of the factors on any motion to modify
3 bond, uh, directs the Court to consider the, uh,
4 strength of the State's case. Because of, uh, this
5 morning's rulings, uh, it is the State's position
6 that the strength of the State's case has become,
7 uh, significantly, uh, solidified.

8 Uh, let me also tell the Court that, um,
9 and Mr., uh, Kachinsky, uh, is to be, uh, made
10 aware of this, that additional, uh, forensic
11 conclusions were received. Additional reports
12 were received two days ago in our office which,
13 again, need to be revealed to this Court under
14 seal.

15 Lastly, Judge, the Manitowoc County, uh,
16 Corporation Counsel in a similar request made by
17 Mr. Avery, uh, made their position known, and I
18 don't know in this case if they've been invited
19 to do so.

20 With all of those factors, Judge, and
21 with the, uh, bond modification on the State's
22 part being at least an option, uh, I'm wondering
23 whether the Court would grant the State, uh, an
24 opportunity, perhaps five to seven days, to, uh,
25 file those matters with the Court to include, in

1 camera, uh, the additional information that, uh,
2 we have received, uh, and if the Court would be
3 willing, uh, to allow a, uh, more inclusive bail
4 modification hearing again in the next five to
5 seven days.

6 That seems to, uh, address those matters
7 that I cannot relay to the Court in open court
8 today, uh, and would provide this Court an
9 opportunity to reflect upon, or at least
10 consider, the relative, uh, strength of the
11 State's case in the bail modification motion.

12 THE COURT: When were the -- the -- When
13 was the forensic evidence of -- of which you make
14 mention received?

15 ATTORNEY KRATZ: The 10th. Two days
16 ago, Judge.

17 THE COURT: All right. Mr. Kachinsky?

18 ATTORNEY KACHINSKY: Well, Your Honor, this
19 motion was filed, I believe, on the 24th or 25th
20 of -- of April, 2006. Uh, State's aware, from
21 having prosecuted the Avery case as well, at least
22 as to, uh, the values of the property that's --
23 that's involved, uh, and, uh, other factors relating
24 to bond other than the recent forensics evidence,
25 uh, as to whether or not the motion would be granted

1 or not. Um, I don't know if the State's forensic
2 evidence would add that much more to what the
3 Court's already ruled today in terms of the
4 admissibility of Mr. Dassey's statements.

5 So, it would be our -- our preference
6 that the Court, uh, proceed with the motion
7 and -- and make a ruling today.

8 THE COURT: Well, let me ask you,
9 Mr. Kratz, is it your intention to, in effect,
10 request that -- that, uh, bail be revoked here and
11 no bail be allowed at all?

12 ATTORNEY KRATZ: No, Judge. But I am going
13 to be asking that bail be increased, uh, having the
14 Court now consider the relative strength of the
15 State's case. That's in -- that's information I
16 didn't have until three minutes ago.

17 THE COURT: All right. Uh, the -- the
18 Court -- the Court is inclined, uh -- Since the
19 State says it -- it -- it has received some
20 additional information that -- that have -- may have
21 a bearing on the, uh, uh -- on the outcome of the
22 motion, the Court is inclined to -- to, uh -- to
23 adjourn this particular motion today, Mr. Kachinsky,
24 and -- and set, uh, uh -- set a near date for -- for
25 hearing on it.

1 Uh, I don't have my calendar with me.

2 ATTORNEY KRATZ: I can file my motion by
3 Wednesday, if that's okay, Judge.

4 THE COURT: Okay.

5 ATTORNEY KRATZ: If the Court can give me
6 five days to do that, I -- I can certainly have that
7 to the Court and Mr. Kachinsky.

8 THE COURT: So that would be, uh, Wednesday
9 the 17th. Um, all right. Could, um -- Well, I
10 think what we'll -- we'll -- we'll do, uh,
11 following -- uh, following business in this court
12 today is -- is, uh, discuss a motion date in
13 chambers. I have to, uh -- I have to take a look at
14 the calendar and you, gentlemen, probably do have to
15 look at yours as well, and there's some other
16 matters we should be discussing.

17 So, I am going to, uh, grant the -- the
18 State's motion to adjourn, order that, uh --
19 order that the revised motion or information be
20 filed by Wednesday, May 17. Um, any other
21 matters to come before the Court today?

22 ATTORNEY KACHINSKY: Your Honor, perhaps,
23 just to avoid unnecessarily calling, a -- a witness,
24 I don't know if the State disputes at all the value
25 of the property that's involved, I could submit to

1 the Court, uh, extra copy of the appraisals that
2 were made and, I believe, perhaps, submitted in the
3 Avery case.

4 If that's not the issue, if the issue is
5 this additional evidence regarding the State's
6 case, if that -- at least that portion of the,
7 uh, motion was taken care of, uh, that would,
8 perhaps, facilitate some of the inconvenience
9 that this delay is going to cause us.

10 ATTORNEY KRATZ: How about if we do this,
11 Judge, I'm willing to share with Mr. Kachinsky my,
12 uh -- my feelings on that after going through the
13 documents and at least alert him whether or not
14 we'll need a witness at that next hearing.

15 THE COURT: Well, I -- I noticed in his
16 motion -- in Mr. Kachinsky's motion -- he said that
17 he had sent you some documentary, uh, proof as to
18 values that he was claiming in motion.

19 ATTORNEY KRATZ: He -- he brought some with
20 him today as well.

21 THE COURT: Yeah. Well, is there any
22 reason we can't just have those marked and be part
23 of the record?

24 ATTORNEY KRATZ: No. That's fine.

25 THE COURT: Yeah. Let's do that. And the

1 bailiff was kind enough to bring a calendar here so
2 let's take a look. How about Friday? The
3 afternoon? Friday, May 26?

4 ATTORNEY KRATZ: State's available, Judge.

5 ATTORNEY KACHINSKY: The only thing -- Uh,
6 I've got something in Chilton, but, perhaps, that
7 can be, uh, taken care of, Your Honor.

8 ATTORNEY KRATZ: I'll see what I can do,
9 Judge, to --

10 THE COURT: How about 1:15?

11 ATTORNEY KACHINSKY: Sure.

12 THE COURT: Anything else, gentlemen?

13 ATTORNEY KRATZ: Judge, I have to, uh,
14 place on the record, and receive the Court's
15 acquiescence, as the information that I intend to
16 provide certainly has not been publicly disclosed
17 and would, uh, I believe, be the kind of information
18 that the Court, uh, likely would not want disclosed.
19 May I file my motion to amend under seal as well?

20 THE COURT: All right. It -- it will be
21 received as -- as an in camera motion, or at least
22 the exhibits to the motion, and -- and anything in
23 the motion that, uh, would be revelatory will be
24 received as an -- an -- as an in camera motion.

25 ATTORNEY KRATZ: That's fine, Judge.

1 THE COURT: Anything further?

2 ATTORNEY KRATZ: No.

3 ATTORNEY KACHINSKY: And, Your Honor, the,

4 uh, appraisal's been marked. I don't know if we're

5 going to -- I didn't see what letter you --

6 THE CLERK: One.

7 ATTORNEY KACHINSKY: As Exhibit 1.

8 THE COURT: Okay. The appraisal will be,

9 uh, Exhibit 1 and it will be part of the -- the

10 motion, uh, and, uh, Mr. Kratz, do you have any

11 objection to the appraisal?

12 ATTORNEY KRATZ: No.

13 THE COURT: I mean, you're not --

14 ATTORNEY KRATZ: Not to -- not to its

15 receipt for this hearing, Judge.

16 THE COURT: All right. All right.

17 Anything else?

18 ATTORNEY KRATZ: No. Thank you, Judge.

19 ATTORNEY KACHINSKY: No.

20 THE COURT: Could I see you both in about

21 ten minutes in chambers, please?

22 ATTORNEY KRATZ: Yes, Judge.

23 THE COURT: Thanks. We're adjourned.

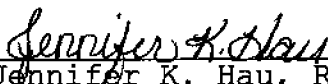
24 (PROCEEDINGS CONCLUDED.)

25

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 29th day of August, 2006.

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19 Jennifer K. Hau, RPR
20 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: MAY 26, 2006

BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:

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

LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

COPY

1 THE COURT: Afternoon, Counsel. Afternoon,
2 ladies and gentlemen. This is the matter of State
3 of Wisconsin vs. Brendan R. Dassey. It's 06 CF 88.
4 We were last in court on May 12, 2006. Court ruled
5 on a motion brought by the defense to suppress a
6 number of statements. After the Court's ruling, we
7 started to discuss another motion that the defense
8 had brought relating to, uh, surety for bail. Uh,
9 the district attorney at that time, or the special
10 prosecutor, I should say, uh, requested time to file
11 his own motion, and I'll -- I'll get into that in --
12 in -- in just a minute.

13 I've had a chance to -- to talk to
14 counsel in chambers prior to coming on the bench,
15 and before we start with this hearing, I'm going
16 to address myself to the defendant. Mr. Dassey,
17 would you pull that microphone close, please?
18 Uh, Mr. Dassey, counsel and I -- and I'm
19 referring here in -- in this case both to defense
20 counsel and to the special prosecutor -- talked,
21 as I mentioned a moment ago, in chambers before
22 we came here, and I'm going to ask you a question
23 and I want you to answer it for me, okay?

24 THE DEFENDANT: Um-hmm.

25 THE COURT: You have to answer out loud.

1 THE DEFENDANT: Yeah.

2 THE COURT: Are you requesting that your
3 current counsel be replaced by someone else?

4 THE DEFENDANT: Yes.

5 THE COURT: And you've made that request of
6 him, have you?

7 THE DEFENDANT: Yeah.

8 THE COURT: You understand that in the
9 event he is replaced by someone else, you can't
10 simply go on requesting that new counsel be
11 appointed for you?

12 THE DEFENDANT: Yeah.

13 THE COURT: That, essentially, you may, and
14 I'm not saying you will, you may get only one shot
15 at this --

16 THE DEFENDANT: Yeah.

17 THE COURT: -- you understand that?
18 Mr. Kachinsky, uh, have you -- And I'm not asking
19 you to reveal anything here that would violate any
20 lawyer-client relationship. But, uh, you are, I
21 take it, aware that there is -- that -- that -- that
22 uh, uh, Mr. Dassey had raised some questions; is
23 that right?

24 ATTORNEY KACHINSKY: Um, yes, Your Honor at
25 the end of a discussion we had earlier this week.

1 THE COURT: Do you believe that, based
2 on -- And, again, I'm not asking you to -- to -- to
3 reveal anything that would violate the rule of
4 confidentiality. But do you believe that this
5 request is his free and unfettered choice?

6 ATTORNEY KACHINSKY: Um, I'm not sure about
7 that, Your Honor. I have, uh, received information
8 that there has been an ongoing campaign by
9 Mr. Dassey's co-defendant to, uh, encourage him to,
10 um, obtain new counsel, that, uh, might be more to
11 his co-defendant's, uh, liking.

12 THE COURT: So, you are, without saying so
13 directly, suggesting that others may be, uh, trying
14 to control the -- the determination of who
15 represents whom here?

16 ATTORNEY KACHINSKY: I -- I believe there's
17 at least a reasonable possibility of that, Your
18 Honor, because my interactions with Mr. Dassey have
19 been quite pleasant. We haven't had any, um,
20 substantial arguments or anything of that nature.

21 THE COURT: All right. I'm going to turn
22 to the special prosecutor. Do you wish to be heard,
23 Mr. Kratz?

24 ATTORNEY KRATZ: Well, Judge, eventually I
25 do. If, in fact, there's going to be a request of

1 the Court for substitution of counsel, and if, uh,
2 Mr. Kachinsky, uh, is indicating to the Court, which
3 I believe he is, that there's a possibility of some
4 unexpected influence on Mr. Dassey or on this
5 decision for the appointment, uh, of counsel that
6 comes from somebody other than Mr. Dassey, that is
7 certainly something that the State has an interest,
8 uh, in being heard on.

9 Uh, if, uh, the Court agrees that this
10 is something that is appropriate for an
11 evidentiary hearing, I'm going to ask the Court
12 to direct Mr. Kachinsky to submit, on
13 Mr. Dassey's behalf, a written request for
14 substitution of counsel giving the State an
15 opportunity, uh, not only to investigate, but to
16 be heard, and that in a very, uh, short time
17 frame the Court does schedule an evidentiary
18 hearing to decide on that request.

19 THE COURT: All right. The Court is -- is
20 reluctant at this point to -- to proceed even on
21 this motion when we have the expression of the
22 defendant that -- that he, uh, wishes replacement
23 counsel. Whether this is really his expression or
24 whether it is -- it is something that is coming from
25 elsewhere, I don't know. But before, Mr. Kachinsky,

1 I think you -- you can or should be replaced, uh, I
2 think we ought to have some sort of evidentiary
3 hearing.

4 I would request that you submit, then,
5 in -- in writing, uh, a request for -- for
6 substitution. And -- and, again, this is a
7 request for substitution. Uh, this isn't
8 necessarily guaranteed to be granted. But the
9 Court, uh, in the past, uh, has -- has given
10 great leeway to that. On the other hand,
11 there -- there may be some other issues here that
12 should be explored before there is any successor
13 counsel appointed if, indeed, there is.

14 Uh, with that said, uh, I -- I'm
15 unwilling to proceed today on -- on this motion.
16 Uh, I'm the -- as I pointed out to you, I think
17 once the -- the defendant says that, uh, he
18 wishes someone else for ill or good reason, uh, I
19 don't believe that, uh, this Court ought to be
20 proceeding. Anything else, gentlemen?

21 ATTORNEY KRATZ: No, Judge, just the
22 scheduling of that hearing.

23 THE COURT: How about Friday, June 2, the
24 afternoon?

25 ATTORNEY KACHINSKY: I've got a couple of,

1 uh -- I've got a felony sentencing in Oshkosh. I
2 could ask the judge to, uh, move it if the Court
3 wants me to.

4 THE COURT: Would you do that, please?

5 ATTORNEY KACHINSKY: Okay.

6 THE COURT: How about you, Mr. Kratz?

7 ATTORNEY KRATZ: Uh, I think that, uh --
8 I think that would be available. Certainly
9 Wednesday or Thursday I know it, uh, would be
10 easier but I can -- I can make it work, Judge, on
11 the 2nd.

12 THE COURT: Yeah. I have trials scheduled
13 all day on Wednesday and Thursday. Otherwise, I'd
14 certainly try to accommodate the both of you, but,
15 uh, I would propose 1:30, Friday afternoon, June 2?

16 ATTORNEY KRATZ: That will be fine, Judge.

17 THE COURT: Uh, in the event the defendant,
18 uh, is no longer of the position that he enunciated
19 here today, we'll simply proceed with the -- the
20 motions on bail at that time. All right? Anything
21 else?

22 ATTORNEY KRATZ: I don't believe so, Judge.
23 Thank you.

24 ATTORNEY KACHINSKY: No, Your Honor.

25 THE COURT: All right. We're adjourned.

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
17

18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF, DECISION & MOTION
HEARING

vs. Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JUNE 2, 2006

BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
SPECIAL PROSECUTOR
On behalf of the State of Wisconsin.

LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

COPY

1 THE COURT: This is the State of Wisconsin
2 vs. Brendan R. Dassey, 06 CF 88. Appearances,
3 please, counsel?

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 appearing as special prosecutor in the case.
7 Joining me this afternoon is Tom Fallon from the
8 Department of Justice.

9 ATTORNEY KACHINSKY: The defendant
10 appears personally with Attorney Len Kachinsky.

11 THE COURT: All right, uh, we last were in
12 this courtroom Friday, May 26, last week. Uh, at
13 that time we had scheduled here a motion on bail.
14 Actually, two competing motions on bail. One from
15 the defense asking that property be posted -- be
16 allowed to be posted as a surety for bail in this
17 instance, and the other from the prosecution asking
18 that, actually, bail be increased. At the -- at the
19 commencement of that proceeding, uh, I asked, uh,
20 Mr. Dassey whether or not -- because it had been
21 discussed in chambers prior to coming in here, uh,
22 whether or not he desired new counsel.

23 Uh, in response to that inquiry he told
24 me he did. Uh, at that point I adjourned the
25 hearing to come back here today to flush out the

1 record, specifically, by finding out from
2 Mr. Dassey, uh, what his objections to court
3 counsel were, if any, and, uh, whether or not
4 those objections rose to the level that
5 substitute counsel could be appointed.

6 Uh, does that comport with your
7 understanding, gentlemen? First, you,
8 Mr. Kachinsky?

9 ATTORNEY KACHINSKY: Uh, yes, Your Honor,
10 it does.

11 THE COURT: Special prosecutor?

12 ATTORNEY KRATZ: Yes, Judge.

13 THE COURT: Mr. Dassey, would you pull that
14 microphone a little closer to you, please? Remember
15 at the -- the last time you were in court I asked
16 you whether or not you wanted someone to replace
17 Mr. Kachinsky?

18 THE DEFENDANT: Yeah.

19 THE COURT: And you responded at that time
20 that you did?

21 THE DEFENDANT: Yeah.

22 THE COURT: Is that your answer today? If
23 I were to ask you the same question, do you want
24 someone to replace Mr. Kachinsky, what would your
25 answer be?

1 THE DEFENDANT: Yes.

2 THE COURT: How do you -- Basically, how do
3 you get along with Mr. Kachinsky?

4 THE DEFENDANT: Not bad.

5 THE COURT: Does "not bad" mean good or
6 what?

7 THE DEFENDANT: Yeah.

8 THE COURT: You guys fight when you're
9 together?

10 THE DEFENDANT: No.

11 THE COURT: You argue?

12 THE DEFENDANT: No.

13 THE COURT: Can you talk with him?

14 THE DEFENDANT: Yeah.

15 THE COURT: Does he listen to you when you
16 talk?

17 THE DEFENDANT: Yeah.

18 THE COURT: Does he explain things to you?

19 THE DEFENDANT: Yeah.

20 THE COURT: Does he explain things to you
21 in a way that you understand them?

22 (No verbal response.)

23 THE COURT: Are you still talking to him?

24 THE DEFENDANT: Yeah.

25 THE COURT: Do you think he's doing what he

1 believes to be in your best interest?

2 THE DEFENDANT: Sort of.

3 THE COURT: And "sort of" mean yes, no, or
4 a little of each?

5 THE DEFENDANT: Little of each.

6 THE COURT: You think he understands your
7 case?

8 THE DEFENDANT: Yeah.

9 THE COURT: Is there any way in which the
10 two of you are -- are in any serious conflict? Any
11 serious difference of opinion?

12 THE DEFENDANT: Not that I know of.

13 THE COURT: Tell me why you want to change
14 lawyers at this point.

15 THE DEFENDANT: Because I think he -- that
16 he -- I think he -- he -- that I think he thinks I'm
17 guilty.

18 THE COURT: And that's the reason that
19 you -- you want to get a different lawyer?

20 THE DEFENDANT: Yeah.

21 THE COURT: Did someone else bring this up
22 to you? The -- the notion that you should have a
23 new lawyer?

24 THE DEFENDANT: Just my mom.

25 THE COURT: And -- and she urged you to

1 find different counsel?

2 THE DEFENDANT: Yeah.

3 THE COURT: Is there any other reason,
4 other than the one that you -- you have given me,
5 that you -- you think Mr. Kachinsky should be
6 replaced by someone else?

7 THE DEFENDANT: No.

8 THE COURT: All right. Mr. Kachinsky, you
9 have, uh, filed an affidavit, uh, to which you've
10 attached -- or I shouldn't say attached -- but
11 you've also filed at the same time a -- a short
12 memorandum of law. I'm going to just touch upon a
13 couple of the -- the items that are in your
14 affidavit, although we all understand that since the
15 affidavit's been filed it is a matter of record.

16 You note in the affidavit that you are
17 approximately one of four lawyers in Wisconsin
18 certified as a criminal trial specialist by the
19 National Board of Trial Advocacy; is that
20 correct?

21 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

22 THE COURT: What is the National Board of
23 Trial Advocacy?

24 ATTORNEY KACHINSKY: Uh, the National Board
25 of Trial Advocacy is an ABA certified organization

1 that tests, uh, attorneys that wish to apply for
2 certification so they can place it in advertisement
3 and other purposes, uh, in their state, uh -- under
4 state codes. Uh, they have to be qualified as a
5 criminal trial specialist. There's requirements for
6 a certain amount of jury trial experience. There's
7 also educational requirements in terms of continuing
8 education, uh, requirements for references, and,
9 also, a -- a check with the reputation among the
10 local judges. Uh, based on that, uh, then
11 they'll -- they'll certify you. They also have
12 certifications for other types of specialties, uh,
13 such as civil trial specialties and family and
14 probate law.

15 THE COURT: Just for the record, ABA means
16 American Bar Association; does it not?

17 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

18 THE COURT: Uh, in your opinion, is this an
19 honor to be certified by the National Board of Trial
20 Advocacy?

21 ATTORNEY KACHINSKY: Uh, it's not so
22 much an honor as it is just a recognition of, uh,
23 considerable experience and, uh, certain level of
24 talent in the area.

25 THE COURT: According to your affidavit, as

1 of May 26, 2006, you had spent over 140 hours
2 representing Mr. Dassey; is that correct?

3 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

4 THE COURT: You've hired an investigator to
5 assist you in the preparation of this case; have you
6 not?

7 THE DEFENDANT: I have, Your Honor.

8 THE COURT: You note, in the course of the
9 affidavit on page two, that there has not, at least
10 in your opinion, been a breakdown of the attorney-
11 client relationship.

12 ATTORNEY KACHINSKY: Uh, correct, Your
13 Honor.

14 THE COURT: This was -- I think this
15 affidavit is dated, uh, May 30. That isn't -- isn't
16 long ago. Has there been any change in that?

17 ATTORNEY KACHINSKY: Uh, I talked to
18 Mr. Dassey, uh, earlier this week. The tone of our
19 discussion was the same as it was before, and pretty
20 much as he just described it to the Court.

21 THE COURT: All right. Uh, you say, as
22 well, that -- that Mr. Dassey appears to understand
23 the -- the issues in this case on an intellectual
24 level; is that correct?

25 ATTORNEY KACHINSKY: Yes, Your Honor.

1 THE COURT: And that your -- your
2 interaction with him, the tone of your
3 conversations, has generally been casual and
4 relaxed?

5 ATTORNEY KACHINSKY: Uh, yes, Your
6 Honor.

7 THE COURT: Uh, has there been any
8 irreconcilable differences between the two of you?

9 ATTORNEY KACHINSKY: Not at this point.

10 THE COURT: Have you received any notice of
11 retention of private counsel for Mr. Dassey?

12 ATTORNEY KACHINSKY: I have not, Your
13 Honor.

14 THE COURT: Uh, are you, uh, in the event
15 Mr. Dassey so desires, prepared to try this case on
16 his behalf?

17 ATTORNEY KACHINSKY: Um, yes, Your Honor, I
18 would be.

19 THE COURT: Uh, all right. That ends the
20 Court's, uh -- Court's inquiry. And -- and I'm now
21 going -- I'm now going to rule.

22 Um, Mr. Dassey has requested that he
23 have substitute counsel appointed for -- for
24 Mr. Kachinsky. In order for that to occur in
25 Wisconsin, the defendant in this case,

1 Mr. Dassey, Dassey must show that there exists a
2 factual basis for appointing a successor counsel.
3 In fact, the defendant, who has appointed
4 counsel, which is what Mr. -- which -- which is
5 what Mr. Kachinsky is, must show that there is,
6 quote, good cause, end quote, uh, to warrant
7 substitution of his current lawyer. And -- and,
8 uh, that -- that's set forth in a number of
9 Wisconsin cases. I -- I'm taking it, for -- for
10 this hearing, from a case called **State v. Haynes**
11 at 118 Wis. 2d page 21 at page 27.

12 Uh, another case, uh, sets forth a
13 number of examples of good cause, and that case
14 is **State v. Wanta**, and that's 224 Wis. 2d 679 at
15 703.

16 Now, I'm not suggesting that these are
17 exclusive examples or illustrations of good
18 cause, but, frankly -- and I think I've read
19 almost all of this -- all the cases that touch on
20 this -- uh, I haven't really seen any cases that
21 embodied other than these factors or these
22 examples I'm about to -- to run through.

23 One of them is attorney -- attorney
24 incompetency. Another is conflict of interest
25 between the lawyer and client. Another is an

1 irreconcilable conflict or difference. And
2 that -- and another is the complete breakdown in
3 communications between the lawyer and his client.

4 Additionally, uh, the ca -- case sounds
5 a cautionary note by pointing out that, uh,
6 exchanging or substituting counsel can't be
7 manipulated in such a way as to interfere with
8 the administration of justice.

9 So, where does it get us based on --
10 based on these facts and using the -- the legal
11 standard that I said applies here?

12 Now, let's look at attorney
13 incompetency. Here, we have a lawyer in
14 Mr. Kachinsky who is one of a handful of
15 Wisconsin attorneys who is certified as a, uh,
16 criminal trial specialist by a -- a acknowledged
17 national board, namely, the National Board of
18 Trial Advocacy.

19 He spent over 140 hours since his
20 appointment on this matter in March -- in early
21 March of 2006 preparing the case.

22 I've had an opportunity to evaluate not
23 only his court appearance, uh, but his written
24 product, uh, brief, uh, motions, pleadings, and I
25 don't think, uh, anyone would even remotely

1 suggest that there's any showing here of
2 incompetency.

3 Uh, conflict of interest between lawyer
4 and client. I don't think that exists. Uh,
5 there's not even a threshold question. By way of
6 illustration, uh, Mr. Dassey originally had an
7 attorney who, uh, determined at one point or
8 another that he was related to, uh, some members
9 of the -- the victim's family in this case. And
10 that's a conflict of interest. Obviously, he
11 requested that he be removed. That was good
12 cause on his part to be removed, and he was
13 removed and replaced by Mr. Kachinsky.

14 The next one is irreconcilable conflict
15 or difference. Um, I don't see or hear anything
16 that tells me that there is an irreconcilable
17 conflict or difference. Uh, Mr. Dassey says he
18 has, uh -- he has some reservations about counsel
19 because of Mr. Dassey's perception of -- of what
20 counsel may or may not think about his guilt.

21 Well, that, in and of itself, and there
22 is case law on this, does not constitute good
23 cause. It also, uh, is part, I would, uh -- I
24 would suggest of a substantial number, if not a
25 majority of -- of criminal law cases, so, I don't

1 think that -- I don't think that there is any
2 irreconcilable conflict or difference.

3 Uh, lastly, for purposes of this
4 discussion, I'm going to use the -- the factor
5 the complete breakdown in communication. There
6 didn't seem to be much, if any, breakdown. There
7 may be a difference of opinion about one thing or
8 another.

9 But, here, uh, Mr. Dassey was -- was
10 very candid, uh, said he could talk to him, he
11 said, uh, Mr. Kachinsky -- Mr. Kachinsky
12 explained things to him. Um, that appeared that
13 Mr. Kachinsky's take on it is that the
14 relationship is pretty cordial. Mr. Dassey did
15 nothing to gainsay that. Uh, so, there certainly
16 isn't, I don't believe, any breakdown, complete
17 or otherwise, in communication.

18 With that said, uh, the Court is -- is
19 going to find here that there has not been good
20 cause shown for substitution of -- of this
21 attorney. Uh, accordingly, I'm going to treat
22 this request as a motion. Accordingly, I'm going
23 to, uh, deny Mr. Dassey's motion to substitute
24 someone for, uh, Mr. Kachinsky as his counsel.

25 Now, we started out on May 12 discussing

1 a couple -- or discussing one bail motion. Uh,
2 the matter was set for a hearing. The defense
3 was prepared to proceed. The defense actually
4 started to proceed. I think we, uh, marked an
5 Exhibit, Exhibit No. 1.

6 Uh, during the course -- or, actually,
7 at the very beginning of the process, special
8 prosecutor raised an objection to proceeding and
9 said that, uh, prosecution wanted to file a
10 motion asking that bail be increased in this
11 instance.

12 Uh, the defense motion was to use
13 property owned in Marinette County by the
14 grandparents of this defendant as a property bond
15 surety for the defendant's two hundred fifty
16 thousand dollar bail.

17 The property, according to Exhibit 1,
18 had been appraised, uh, with a fair market value
19 of three hundred fifty-two thousand, six hundred
20 dollars. The, uh, local tax authorities had
21 valued it at, three hundred thirty-two thousand,
22 uh, six hundred dollars. It -- it -- it's owned
23 by Allen -- Allen and Delores Avery.

24 Um, the special prosecutor, uh, after
25 the hearing, filed, on May 17, uh, a motion

1 requesting that bail be raised from two hundred
2 fifty thousand to five hundred thousand. The
3 motion was received under seal. After reviewing
4 the motion, this Court sees no reason why the
5 motion should remain under seal. The Court is,
6 uh, going to lift that portion of its order that
7 placed the, uh -- placed the motion under seal.

8 I'm also going to request that Counsel,
9 when he -- he talks about this motion, uh,
10 discusses the factual basis for -- for the
11 items -- or for the, uh, material found in it.

12 Uh, I should note as well that Manitowoc
13 County, through its corporation counsel, Steven
14 Rollins, has written a letter that is a matter of
15 record in this court, uh, requesting that the
16 Court not grant the motion of the defendant.
17 Specifically, uh, the defendant's motion
18 envisions Manitowoc County as being the mortgagee
19 for any mortgage that would be, uh, taken against
20 the property in Marinette County.

21 Gentlemen, have I accurately, uh,
22 summarized -- I'll start with you, Mr. Kratz --
23 summarized the issue that's here before the Court
24 today?

25 ATTORNEY KRATZ: Yes, Judge.

1 THE COURT: Mr. Kachinsky?

2 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

3 THE COURT: All right. What I'm going to
4 suggest we do is, Mr. Kachinsky, you can, uh, should
5 you wish, make whatever argument you want on your
6 motion. Uh, Mr. Kratz, you can respond. And at,
7 uh -- following your own response, uh, make an
8 argument on your motion and you can reply to his
9 response. Go ahead.

10 ATTORNEY KACHINSKY: Well, Your Honor,
11 we've asked the Court to permit, uh, Mr. Dassey to
12 be released on a property bond, and we certainly
13 acknowledge, uh, the concerns expressed by, uh,
14 Corporation Counsel Rollins about a property bond
15 not being as easily, uh, uh, dealt with, uh, in the
16 event that there's a violation and they wish to fork
17 out the forfeiture of the bond because it is real
18 property and not, uh -- not cash, uh, that can
19 simply be moved from one account, uh, into another.

20 Um, and that because of those logistical
21 problems that would exist in terms of ever
22 forfeiting the bond, should there be a -- a
23 violation or desire by the State, uh, to do so,
24 is why we suggested that the amount of the lien
25 be three hundred thousand dollars rather than two

1 hundred fifty thousand dollars to compensate for
2 possible attorney's fees and other costs that
3 Manitowoc County might have in the event that
4 Manitowoc -- that the State had to foreclose the
5 bond because of a violation.

6 I think in terms, though, of -- of
7 securing, uh, Mr. Dassey's, uh, presence in
8 further proceedings and compliance with the
9 conditions of bond that, uh, basically tying up
10 his grandparents' property in, uh -- in
11 Marinette, uh, is just as effective as, uh, tying
12 up two hundred fifty thousand dollars in a trust
13 account that's managed by the clerk of courts,
14 uh, of Manitowoc County.

15 Uh, the property involved, unlike the,
16 uh, property in this county, which is a salvage
17 yard, um, doesn't have nearly the environmental
18 concerns that, uh, would exist when, uh, Steve
19 Avery made a similar motion, uh, in his case,
20 which the Court, uh, is well aware of.

21 And, in fact, the paperwork we submitted
22 to the Court regarding the form of the mortgage,
23 etc., was taken from that case. It provided, uh,
24 to us, with the assistance of, uh, Steve Avery's,
25 uh, attorneys, uh, I believe by increasing the

1 amount of the bond and tying up that significant
2 amount of property, which had been valued higher
3 than the present bond, that, uh, it's quite, uh,
4 realistic to believe that that would serve as a
5 significant incentive for Mr. Dassey, uh, to, uh,
6 comply with the law, show up in court, and not,
7 uh, violate other terms of bail, uh, should the
8 Court, uh -- Court grant that.

9 Uh, he's a -- he's a -- a 16-year-old
10 with, uh, community -- plenty of community ties
11 and someone who feels a great deal of affection
12 toward his, uh, grandparents and wouldn't, uh,
13 uh, I think, with any malice or forethought, do
14 anything that would cause them to forfeit, uh,
15 property worth over quarter of a million dollars
16 up in Marinette County.

17 THE COURT: Mr. Kratz?

18 ATTORNEY KRATZ: Thank you, Judge. Some of
19 the factors that argue against a, uh, property bond,
20 uh, also argue for the increase in the cash bond. I
21 will defer to Mr. Rollins, as he's much more
22 familiar with the, uh, process by which a property
23 bond is, uh, converted, uh, to cash. Uh, since the
24 value of the property remains an open question, uh,
25 Mr. Rollins', uh, opinion, I think, should be given,

1 uh, a lot of, uh -- a lot of deference.

2 The, uh, primary factor, however, is
3 that the State believes that property, rather
4 than cash, would be insufficient to secure
5 Mr. Dassey's appearance at, uh, future court
6 appearances. And, therefore, cash should be
7 required.

8 The grandparents, if they're so
9 inclined, had the ability to go to a bank, and if
10 the property is really worth what it's worth,
11 they can convert that property, uh, by way of
12 mortgage to cash and, uh, have that posted, but,
13 the property, uh, not belonging to Mr. Dassey
14 himself, the State believes is, uh, insufficient
15 to secure his appearance at future court
16 appearances.

17 That, of course, is the primary purpose
18 of bond under Chapter 969. That is to secure,
19 uh, future court appearances, uh, and because of
20 the nature of the offense, because of the risks
21 that I'll talk about, uh, in just a moment, uh,
22 the State agrees with the corporation counsel for
23 Manitowoc that the property bond is, uh,
24 insufficient and the Court should require that it
25 remain a cash bond.

1 Cash bail, however, uh, sometimes is
2 necessary to secure appearances. That has been
3 already determined by this Court. The factors
4 that the Court considers when determining the
5 amount of the cash bail includes the gravity of
6 the offense and the penalties the defendant
7 faces, uh, if, in fact, he's convicted. Uh,
8 those, by the way, haven't changed since our last
9 time, uh, here in court.

10 Uh, but the Court should also consider
11 the degree of violence involved, the character
12 and strength of evidence. This Court, as I
13 heard, uh, this afternoon, uh, has, uh, ordered
14 the State, uh, to, uh, release the information by
15 way of factual basis that we've included in -- in
16 our, uh, motion, uh, and I will, uh, do that at
17 this time because the -- the new information
18 that's been developed does go not only to the
19 degree of violence that's involved in this case
20 but also to the character and strength of
21 evidence.

22 First of all, this Court ruled, on the
23 1st of, uh, March, that the statements given by,
24 uh, Brendan Dassey, or I should say the
25 statements that he made on the 1st of March, are,

1 in fact, admissible. As I argued, uh,
2 previously, that solidifies, uh, the relative,
3 uh, uh, strength and, uh, position of the case as
4 far as proceeding.

5 However, I've also included for the
6 Court by way of -- of, uh, specific information
7 in my motion that there have been new forensic
8 findings, uh, specifically in a report received
9 by the, uh, D.A.'s office. Uh, the report is
10 dated the May 8 has been shared with, uh, Mr.,
11 uh, Kachinsky, and, also, uh, Counsel in, uh, the
12 co-defendant's case.

13 Uh, this Court is now aware that on the
14 2nd of March a bullet fragment was recovered from
15 the garage of the property belonging to Steven
16 Avery. This Court may recall that in
17 Mr. Dassey's statement, Mr. Dassey's admission,
18 uh, he indicated that Mr. Avery, as part of the
19 taking the life of Teresa Halbach, uh, used a
20 firearm, uh, in the, uh, garage area.

21 With that statement having been given,
22 uh, this Court is aware that a search warrant was
23 sought, was obtained, and was executed on the 1st
24 and 2nd of March at the Avery, uh, property.
25 And, in the Avery garage, as I mentioned, a

1 bullet fragment, uh, was recovered. That bullet
2 fragment was submitted to the Wisconsin Crime
3 Laboratory for DNA analysis. And, in fact, a DNA
4 profile was recovered from that bullet fragment.
5 We now know that Teresa Halbach's DNA, uh, was
6 found on that bullet fragment taken from the
7 Avery garage.

8 That, of course, is significant
9 evidence, significantly corroborates Mr. Dassey's
10 statement, uh, as to, uh, the, uh, manner, uh, of
11 homicide, uh, and it does go directly to the
12 strength and character of the evidence.

13 Mr. Dassey also mentioned during his
14 admission on, uh, the 1st of March, that, uh,
15 Mr. Avery, uh, opened the hood of, uh, Teresa
16 Halbach's SUV. Thereafter, law enforcement
17 officials processed the hood latch of the SUV.
18 Again, a DNA profile was developed from the hood
19 latch and was found to be a positive match for
20 that of Steven Avery.

21 Once again, Judge, these are new
22 forensic findings that, uh, corroborate not only
23 Mr. Dassey's statements, but go to the strength
24 of the evidence, uh, that is available to the
25 State.

1 Lastly, Judge, there was a new statement
2 provided by Brendan Dassey to law enforcement
3 officials on the 13th of May. After this Court
4 ruled on the 12th of May the admissibility of
5 Mr. Dassey's statements, Mr. Dassey, uh, while
6 inviting law enforcement to meet with him,
7 provided new and important details, uh, as to the
8 homicide and surrounding circumstances.

9 Mr. Dassey himself, on the 13th, indicated that
10 he and co-defendant, Steven Avery, planned the
11 homicide of Teresa Halbach. That is, that they
12 targeted Teresa Halbach several days prior to
13 October 31.

14 He and Mr. Avery met, discussed not only
15 the, um, manner in which the homicide would
16 occur, but who the victim would be. They
17 targeted Teresa Halbach, and, in fact, uh, as
18 Mr. Avery's initial statement -- Excuse me. As
19 Mr. Dassey's initial statement, uh, may have, uh,
20 suggested, that he simply walked into, uh, a
21 circumstance on the 31st, out of Mr. Dassey's own
22 mouth on the 13th of May, we now know that that
23 wasn't true. This was a premeditated act.
24 Didn't just happen across this, uh, crime being,
25 uh, committed.

1 Mr. Dassey, on the 13th also, uh,
2 indicates that the location of the homicide, uh,
3 was the garage rather than the, um, bedroom,
4 which again provides in more detail as to
5 mechanism and location of death. And, finally,
6 more details were provided as to mutilation, uh,
7 of the, uh, victim's corpse.

8 This Court has to consider, when
9 deciding what the appropriate amount of cash bail
10 to be, uh, risks. Uh, there is a risk of flight
11 that the State argues has increased. There's a
12 risk of harm not only to Mr. Dassey himself by
13 himself, but from others not wishing Mr. Dassey
14 to be available to testify, if necessary, in
15 future court proceedings, not just his own, but
16 in other matters that he may be required to
17 testify in. Risk of manipulation from external
18 sources. Tampering with the attorney-client
19 relationship. Decisions that are helpful to
20 persons other than Brendan Dassey, I think
21 Mr. Kachinsky's already alleged, and is a risk,
22 that this Court can and, I think, should
23 consider, lastly, the risk to the general public
24 is something the Court can and should consider.

25 Given now, Mr. Dassey's statement that

1 this was a premeditated crime, that it was
2 planned, that they targeted the victim, the
3 violence and the cruelty exhibited, uh, in this
4 series of events, the State believes now requires
5 or justifies the Court increasing cash bail from
6 two hundred fifty thousand dollars to five
7 hundred. The state believes that amount
8 necessary to secure Mr. Dassey for future court
9 appearances.

10 That's all the State has, Judge. Thank
11 you.

12 THE COURT: Mr. Kachinsky.

13 ATTORNEY KACHINSKY: Your Honor, in terms
14 of whether or not the present amount of bail is, uh,
15 sufficient or not to assure Mr. Dassey's presence at
16 trial, or to ensure compliance with the issues of
17 bond, the Court needs to compare the circumstances
18 that existed at the time it was originally set when
19 he was arraigned or March 3 of, uh, this year, uh,
20 to the present, and to see what the new evidence as
21 been cited by Mr. Kratz really adds in terms of the
22 likelihood, of, uh, conviction and eventual
23 sentence, uh, based on -- uh, to Mr. Dassey.

24 When Mr. Dassey first appeared before a
25 court and bond was, uh, scheduled at two hundred

1 fifty thousand dollars, uh, the Court was aware,
2 uh, and it was contained in the Criminal
3 Complaint, that there was a videotaped, uh,
4 confession that, uh, was sufficient to support
5 the three charges that were, uh -- were in the
6 Complaint.

7 Confession, of course, uh, if it's, uh,
8 valid and jury believes it, and doesn't believe
9 that it was, uh, coerced or the result of some
10 type of coaching by -- by law enforcement
11 officials, this is probably about the strongest
12 type of evidence, uh, you could ever have, uh, in
13 a criminal case.

14 There were, of course, at that time
15 other circumstances that would tend to, perhaps,
16 show that Mr. Dassey was the perpetrator of these
17 offenses in terms of his, uh, location at his
18 residence, uh, his presence in the area around
19 the time of the, uh, offense, uh, and so forth.

20 The question is, does this new evidence,
21 cited by the State, really add very much to that?
22 It doesn't really change, uh, any evidence that
23 didn't already exist; that Mr. Dassey lived in
24 the vicinity of Mr. Avery, knew Mr. Avery, or
25 that, uh, Mr. Dassey had made statements on

1 videotape, uh, claiming to have been involved in
2 the offenses that, uh, Mr. Avery, uh, had
3 previously been, uh, charged with.

4 Uh, his character, uh, before the bond
5 was originally set, was someone who never had any
6 contact with law enforcement other than previous,
7 um, meetings with law enforcement officials in
8 connection with this, uh, investigation. The
9 Court saw those later on when the motion to
10 suppress was -- was litigated and it really
11 doesn't add very much, uh, to that as well.

12 Uh, whatever degree of -- of planning
13 may have existed, uh, it's still rather clear
14 that the, uh, impetus behind this was that it did
15 occur, that Steven Avery and not, uh, Brendan
16 Dassey. The relative ages of the individuals are
17 known by the Court. The Court has seen
18 Mr. Dassey's, uh, interaction with others in
19 those videotapes, which the Court reviewed in the
20 motion to suppress, uh, to see that Mr. Dassey is
21 not someone who's a leader or aggressor in terms
22 of violence against, uh, other individuals.

23 I don't believe that the, uh, State's
24 additional evidence has added much to beyond what
25 already existed at the time bond was originally

1 set. So we'd ask that the bond amount, uh,
2 remain where it is.

3 THE COURT: All right. Uh, the Court has
4 before it two motions, and -- and I'll treat them as
5 they came in.

6 First is the motion on the part of the
7 defendant to be permitted to use as surety for
8 two hundred fifty thousand dollar bail property
9 in Marinette County that has been, uh, valued at
10 I think it was between three hundred thirty and
11 three hundred fifty thousand dollars. The
12 defendant proposes executing a mortgage in favor
13 of Manitowoc County in the sum of three hundred
14 thousand dollars to, uh, secure Mr. Dassey's two
15 hundred fifty thousand dollar bail.

16 Uh, as both counsel have noted, uh, bail
17 is a -- a -- bail setting is something of a
18 balancing act under Wisconsin law. Specifically,
19 under Chapter 969, uh, our statutes. The Court
20 in setting bail here has taken a look at the
21 nature, number, and gravity of the offenses, the
22 potential penalty the defendant faces and, uh,
23 the violence of the acts involved, and came up,
24 as a result of that, with two hundred -- with
25 bail of two hundred fifty thousand dollars.

1 Uh, the statutes permit under certain
2 circumstances that property be posted in lieu of
3 cash. Uh, and that is precisely what, uh, the
4 defendant is proposing to do in this case. It's
5 not the defendant's property, it's his
6 grandparents' property. Uh, and that becomes
7 part of the -- the calculus in here but, uh, not,
8 uh, from my perspective a great part of the
9 calculus.

10 Uh, I believe that under the -- the case
11 of **State v, Gassen** at -- at 143 Wis. 2d 761,
12 specifically, at page 763, uh, the Court is
13 permitted to reject the use of a surety bond in
14 lieu of cash, and the Court can base that
15 rejection, and I'm going to do so, on the
16 seriousness of the offenses, the severe possible
17 penalties, and under those circumstances I think
18 that, uh -- I think that in this instance cash
19 is -- is going to have to be necessary.
20 Therefore, I deny the motion to -- to lower bail.

21 Now, Mr. Kachinsky -- Excuse me.
22 Mr. Kratz has filed a motion and he has asked
23 for, uh, an increase in bail from two hundred
24 fifty thousand to five hundred thousand dollars.

25 Uh, 969.08 of the statutes the -- the --

1 the title of it says, grant reduction increase or
2 revocation conditions of release. Uh, subsection
3 two talks about violations of the conditions of
4 release or the bail bond constitutes the grounds
5 for the court to increase the amount of bail or
6 otherwise alter the conditions of -- of -- of
7 release.

8 Now, I -- I'm not suggesting that that's
9 the only time, obviously, that -- that one can do
10 this because, uh, uh, there are other instances.

11 However, I think there has to be some --
12 some significant change, uh, at least arguably
13 significant change, in -- in -- in the -- uh, in
14 the matter before I am going to be granting an
15 increase in the bail.

16 In this case, uh, the special prosecutor
17 has told us that the -- the -- they have since,
18 uh, discovered forensic evidence that, uh, tends
19 to support, I suggest, uh, some of the admissions
20 made by this defendant, and also tie together a
21 little bit more completely the case and, as well,
22 this defendant apparently has -- has made some
23 other -- other admissions.

24 While this is true, and from the
25 standpoint of the texture of the case it -- it

1 changes, uh, I don't think qualitatively the case
2 changes. The same -- same crimes are being
3 charged. Same penalties are -- are -- are -- uh,
4 the defendant's going to be subject to the -- the
5 same penalties. I don't think, in short, that
6 the grounds offered here today by the special
7 prosecutor, uh, constitute sufficient grounds to
8 increase the bail, and accordingly, I'm
9 denying -- denying the special prosecutor's
10 motion as well.

11 ATTORNEY KRATZ: Judge, should the, uh,
12 defendant be in a position, whether himself or,
13 more, uh, typically, uh, by a -- a family member,
14 uh, wish to, uh, post cash bail, uh, is the Court,
15 uh, going to, uh, fashion, uh, some nonmonetary
16 conditions of bond that might be appropriate.

17 Because of the -- the threats that I
18 mentioned about, uh, manipulation, uh, and, uh,
19 other, uh, factors, uh, the State believes things
20 like, uh, place of, uh, residence, uh, other
21 conditions of release all become important, and
22 should that eventuality occur, uh, I would simply
23 ask that the State be given an opportunity to be
24 heard by the Court in fashioning a nonmonetary
25 condition.

1 THE COURT: And that may well be the case
2 and you'll certainly have a chance to -- to make
3 that motion. Anything else from you, Mr. Kachinsky,
4 today?

5 ATTORNEY KACHINSKY: No. I would agree
6 with Mr. Kratz that if the bond is, uh -- if posted,
7 there should, perhaps, be a held -- hearing held
8 very promptly to determine if there's any additional
9 nonmonetary conditions that ought to be set.

10 THE COURT: All right. Um, each of you
11 can draft the -- the order denying the other's
12 motion. Anything else today, gentlemen?

13 ATTORNEY KRATZ: Nothing, Judge. Thank
14 you.

15 THE COURT: All right. We're adjourned.

16 (PROCEEDINGS CONCLUDED.)
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1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
17

18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

 PLAINTIFF, MOTION HEARING

vs. Case No. 06 CF 88

BRENDAN R. DASSEY,

 DEFENDANT.

DATE: AUGUST 25, 2006

BEFORE: Hon. Jerome L. Fox
 Circuit Court Judge

APPEARANCES:

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

 LEONARD D. KACHINSKY
 Attorney at Law
 On behalf of the Defendant.

 BRENDAN R. DASSEY
 Defendant
 Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

COPY

1 THE COURT: This is in the matter of the
2 State of Wisconsin vs. Brendan R. Dassey. It's Case
3 No. 06 CF 88. Appearances, please?

4 ATTORNEY KRATZ: The State of Wisconsin
5 appears by Calumet County District Attorney Ken
6 Kratz. I'm appearing as special prosecutor.

7 ATTORNEY KACHINSKY: Defendant appears
8 personally with Attorney Len Kachinsky.

9 THE COURT: All right. Originally, this
10 date and time was set as a scheduling conference.
11 New issues have arisen since we set this date. The
12 Court intends to treat all the matters it believes
13 it has before it now.

14 Um, on August 14, 2006, Attorney
15 Kachinsky filed with the Manitowoc County Clerk
16 of Courts's office a demand for speedy trial.
17 Under Wisconsin Section 971.10 (2), the trial of
18 a defendant shall commence within 90 days from
19 the date the defendant demands in writing his
20 trial. That demand was filed, as I said, on
21 August 14, 2006. Therefore, I'm setting the
22 trial in this matter to -- for November 1 through
23 the 17, 2006.

24 Prior to this demand for speedy trial,
25 the Court had set February 5, 2007, as the

1 beginning date for the trial. In light of Judge
2 Willis' decision to try State v. Avery, a case
3 filed approximately four-and-a-half months before
4 this case, uh, commencing on February 5, that
5 time period is no longer available. While I have
6 set November 1, 2006 as the start date for this
7 case, that trial time may be subject to a motion
8 for continuance, or continuances, depending on
9 circumstances.

10 There's also a motion for change of
11 venue under 971.22 filed by the defendant on
12 March 17, 2006. That motion was supported by
13 Mr. Kachinsky's affidavit detailing why he didn't
14 think the defendant could get a fair trial in
15 Manitowoc. Essentially, the affidavit said he
16 couldn't get a fair trial because of the nature
17 and extent of the pretrial publicity not only
18 associated with this case but with the case of
19 State v. Steven Avery.

20 The Court sets, uh, September 14, 2006
21 at 8:30 a.m. as the date and time for hearing
22 that motion. Again, understanding that, uh --
23 depending on circumstances, that time may have to
24 be changed.

25 On August 15, 2006 the Court received

1 appropriate for us to appoint you to these types
2 of case. Judge Fox will be provided with a copy
3 of this letter. You have the right to appeal
4 this decision pursuant to Administrative Code PD
5 1.06(2). A written notice of appeal must be
6 received by me within 30 days.

7 That letter is actually signed by the
8 State Public Defender Nicholas Chiarkas.

9 Uh, I received it, uh, in conjunction
10 with a letter sent to me. And I'll read that
11 letter:

12 Dear Judge Fox: Please find enclosed a
13 copy of a letter sent to Mr. Kachinsky advising
14 him that we have removed him from our Class A
15 felony certification list. We have taken this
16 unusual action based on his actions in the
17 Brendan Dassey case. We no longer feel it is
18 appropriate for him to provide representation in
19 these types of cases to public defender clients.
20 If you have any questions about our action,
21 please contact me.

22 And that is signed, uh, Deborah Smith,
23 who is the Director of the Assigned Counsel
24 Division of the State Office of Public Defender.

25 In response to that, Attorney Kachinsky

1 has filed a motion to withdraw as counsel. That
2 motion which is part of the record in this matter
3 notes -- And I'm not going to go through the
4 entirety of the motion but I'm going to note a
5 few things. Uh, among the factors the
6 undersigned attorney believes the Court should
7 consider are the following:

8 One, alleged inadequate performance of
9 existing counsel.

10 Two, whether or not the alleged
11 inadequate performance of counsel had an adverse
12 impact upon the defendant.

13 Three, the history of outside forces
14 seeking to secure withdrawal of existing counsel.

15 Four, the wishes of the defendant and
16 his mother that existing counsel continue to
17 represent the defendant.

18 Five, the impact of new counsel upon the
19 defendant's demand for a speedy trial.

20 And, six, public confidence in the
21 administration of justice.

22 Mr. Kachinsky supported that motion with
23 what I'll describe as a very thorough affidavit.
24 In that affidavit -- And, again, I'm not going to
25 read the affidavit word for word. I'm going to

1 summarize it. And when I'm done summarizing it,
2 I'm going to ask Mr. Kachinsky if I fairly
3 characterized it and ask him if he has anything
4 further to add.

5 What he discusses in the affidavit is as
6 follows:

7 Number one, his background as a defense
8 lawyer, much of which was placed on the record at
9 a hearing held on June 2, 2006 when Brendan
10 Dassey, uh, said he sought to replace Mr.
11 Kachinsky as his court appointed counsel.

12 Two, his belief that others have been
13 seeking to replace him as counsel. He
14 specifically -- specifically mentions one of
15 Steven Avery's attorneys as one who suggested to
16 the defendant's mother that Attorney Kachinsky
17 should be replaced.

18 Three, he mentions the services that he
19 has provided the defendant as well as the
20 interaction with the defendant.

21 Four, he sets forth his rationale for
22 permitting the defendant to be interviewed on
23 May 13, 2006 in his absence. Specifically, he
24 says that his investigator interview -- excuse
25 me -- that his investigator interviewed the

1 defendant on May 12, 2006 and obtained, quote,
2 new information, end quote, from the defendant,
3 some of which related to physical evidence which
4 might be destroyed if other parties became aware
5 of it.

6 Attorney Kachinsky had a scheduled army
7 reserve drill that weekend so he gave the
8 defendant the option to speak with authorities
9 either on May 13, 2006, the date of his reserve
10 drill and for which he was unavailable, or May
11 17, 2006, the first day he was available.

12 The defendant chose to have the
13 interview on May 13, 2006. Attorney Kachinsky
14 made arrangements to have his investigator
15 present at the interview. The interview was
16 limited to clarifications -- and, again, this is
17 from Mr. Kachinsky's affidavit -- clarifications
18 of Mr. Dassey's March 1, 2006 interview, and
19 Attorney Kachinsky would be available by cell
20 phone to answer any questions.

21 Subsequent to the interview,
22 Mr. Kachinsky reviewed the tapes and a
23 transcript. He found the investigators had
24 complied with the agreed upon conditions.

25 The affidavit then alludes to the letter

1 from the public defender's office, uh, suggesting
2 the public defender may have learned of the May
3 13, 2006 interview from counsel for Steven Avery.

4 Attorney Kachinsky also opines that the
5 public defender's letter of 8 -- of August 14,
6 2006 may have been written to, in his words, and
7 I'm quoting, maximize negative publicity, end
8 quote.

9 He points out that the decertification
10 is prospective, that means forward, and,
11 therefore, does not apply to this case. He
12 questions the state public defender's conclusion
13 that his nonappearance at the May 13, 2006
14 interview was, quote, indefensible, end quote.
15 Uh, he does this by citing to federal court
16 practices where in some instances counsel need
17 not be present during certain meetings and
18 debriefings of their client.

19 Finally, he notes that both the
20 defendant and his mother have requested that he
21 remain on the case as defendant's attorney.

22 Before I talk to Mr. Kachinsky, uh, I
23 would like to point to, uh, one thing. I would
24 like to correct his assertion on page three of
25 the affidavit where he says, referring to the

1 May 13 interview, quote, however, the information
2 provided did not appreciably increase the
3 strength of the State's case against Dassey. The
4 Court made such a finding on June 2, 2006 when it
5 denied the State's motion to increase the amount
6 of the bond, end quote.

7 The Court made no such finding on, uh,
8 June 2, 2006. What the Court found -- And the
9 Court has not seen the interview nor read a
10 transcript of it. But what the Court found was
11 that the interview may have changed the texture
12 of the case. I think it was the -- the special
13 prosecutor's point that the interview as well as
14 some additional evidence that had been educed,
15 uh, since March 1 had, in effect, and he didn't
16 say this but I will, made a good case better.

17 Uh, I believe I said, and I reviewed the
18 transcript, that the -- I thought that the -- the
19 interview of May 13, based on what I saw in the
20 special prosecutor's petition supporting his
21 motion to -- to increase bail, may have changed
22 the texture of the case but the case
23 qualitatively remained the same. The same crimes
24 were charged and the same penalties applied to
25 the crimes that were charged.

1 I should point out that Mr. Kachinsky,
2 uh, supplemented his affidavit with a curriculum
3 vitae of his investigator. Additionally, he
4 supplemented that with an affidavit from the
5 investigator which I received by fax yesterday.

6 Now, I'm going to ask you,
7 Mr. Kachinsky, have I accurately summarized your
8 motion and affidavit?

9 ATTORNEY KACHINSKY: Uh, yes, Your Honor,
10 you have.

11 THE COURT: Is there anything -- Uh, you
12 better turn your mike on. I --

13 ATTORNEY KACHINSKY: Uh, yes, Your Honor,
14 the Court --

15 THE COURT: Hit the button.

16 ATTORNEY KACHINSKY: There we go.

17 THE COURT: Yeah.

18 ATTORNEY KACHINSKY: Uh, the Court's --
19 uh, Court's summarization, uh, is accurate, yes.

20 THE COURT: Is there anything that you wish
21 to add today?

22 ATTORNEY KACHINSKY: Uh, yes, Your Honor, I
23 would. Um, and in particular, uh, regarding item
24 number ten on page five, wishes of -- of the
25 defendant and his mother, uh, at the time that this

1 was composed and written, I had spoken to Mr. Dassey
2 last Friday and also last -- and also to his -- him
3 and his mother, uh, Sunday, uh, at that time that
4 was their wishes that I remain on the case.

5 Uh, subsequently, uh, yesterday morning
6 approximately 11:00 or so I received a call from
7 TV-11 indicating that there had been a phone call
8 they had received from Barbara Janda indicating
9 that they had changed -- or at least that Barbara
10 Janda had changed her mind as to what, uh,
11 Brendan wished to do regarding my continued, uh,
12 representation. Uh, they came to my office to
13 play the tape and, indeed, uh, according to the
14 Barbara Janda tape I listened to, uh, she no
15 longer believed -- or at least stated the same
16 thoughts on that issue as she did on the evening
17 of, uh, Sunday.

18 So, that -- that appears to have
19 changed. I briefly spoke to Barb Janda, uh, just
20 before court and she confirmed nothing had
21 changed since yesterday. I've not, uh -- And
22 I -- excuse me -- just spoke, to, uh, Brendan a
23 couple minutes ago and he also indicated that
24 he'd changed his mind since, uh, we spoke on
25 Friday and Sunday of last week. So that has

1 changed.

2 Um, as a result of that, Your Honor, um,
3 as to what my personal wishes are in the case,
4 uh, frankly, I was willing to continue on with
5 this case, and without a lot of vehement, uh,
6 objection, uh, prior to that incident, uh, if
7 Brendan Dassey had confidence in me, uh, as his
8 attorney, I was more than willing to continue in
9 spite of all the, uh, hubbub, um, in the media
10 and with the State Public Defender's Office and,
11 uh, everything else.

12 However, in light of Mr. Dassey's wish,
13 uh, to get a new attorney, uh, that changes my
14 position. I think in a case, uh, as serious as
15 this, that, um, Mr. Dassey should, uh, have an
16 attorney that he has, uh -- has confidence in.

17 In addition, it's unreasonably dis --
18 difficult from my standpoint to, um, effectively
19 represent a client whose mind on various issue
20 changes, um, as often as Mr. Dassey's, uh, does,
21 and I believe it would probably, in light of
22 that, be in his best interests now, uh, to, uh,
23 get a new attorney even though I feel my
24 representation has been, uh, certainly adequate
25 in a constitutional sense and, uh, up to and

1 including more recent, uh, motions that have been
2 filed that he asked me to.

3 But because, uh, he now wishes me to
4 withdraw and because, whatever the cause might
5 be, it might be loss of confidence caused by the,
6 uh, State Public Defender letter or whatever,
7 that I think it would best that he start over
8 with a new attorney. The Court, of course,
9 decides contrary, uh, that's -- that's the
10 Court's prerogative. But that's my personal
11 desire.

12 THE COURT: All right. Would you give
13 Mr. Dassey the microphone, please? Mr. Dassey, you
14 were here on May 26, 2006 and June 2, uh, 2006, and
15 each of those times I asked you if you wished to
16 have new counsel appointed for you. On each of
17 those occasions you said, yes. Do you remember
18 that?

19 THE DEFENDANT: Yeah.

20 THE COURT: Uh, Mr. Kachinsky, in his
21 affidavit, says at the time at least that the
22 affidavit was constructed that you wished him to
23 remain on the case. Was that true?

24 THE DEFENDANT: Yeah.

25 THE COURT: Uh, he also says that you may

1 have changed your mind. So, I'm going to ask you,
2 what is your wish as of today?

3 THE DEFENDANT: That I want him off the
4 case.

5 THE COURT: You remember you and I had a
6 discussion of that on June 2? I asked you a number
7 of questions? You recall that?

8 THE DEFENDANT: Yeah.

9 THE COURT: Is there any particular reason
10 that you want him off the case?

11 THE DEFENDANT: That I think he's not
12 helping me very much.

13 THE COURT: Are you telling me that you
14 don't think he is rendering you the assistance you
15 think you ought to be getting?

16 THE DEFENDANT: Yeah.

17 THE COURT: Do the two of you still get
18 along?

19 THE DEFENDANT: Yeah.

20 THE COURT: Any arguing? Fighting?

21 THE DEFENDANT: No.

22 THE COURT: Does he listen to you when you
23 tell him something?

24 THE DEFENDANT: Yeah.

25 THE COURT: Was there anything about the

1 letter from the public defender -- Did you see that
2 letter incidentally?

3 THE DEFENDANT: Yeah.

4 THE COURT: And someone talked to you about
5 it? Was there anything about that that upset you?

6 THE DEFENDANT: No.

7 THE COURT: That -- that wasn't a -- a
8 cause for upset, huh?

9 THE DEFENDANT: No.

10 THE COURT: Basically, you think that he
11 isn't acting in your best interest? And I don't
12 want to put words in your mouth. But is -- Uh, let
13 me rephrase that. Do you think he's acting in your
14 best interests?

15 THE DEFENDANT: I don't get what you're
16 saying.

17 THE COURT: Okay. Do you think he's on
18 your side?

19 THE DEFENDANT: Not really.

20 THE COURT: And that's because he doesn't
21 listen to you?

22 THE DEFENDANT: Well, he listens to me
23 but --

24 THE COURT: Doesn't do what you want him to
25 do?

1 THE DEFENDANT: Yeah.

2 THE COURT: All right. Mr. Kratz, at this
3 stage is there anything that you wish to add to the
4 record?

5 ATTORNEY KRATZ: Your Honor, as I
6 previously, uh, noted to the Court, I think the
7 record, uh, needs to, uh, include the fact that, uh,
8 decertification by the public defender's, uh,
9 office, if, in fact, uh, that occurs, that, of
10 course, can be withdrawn. But, if, in fact, that is
11 the result, uh, does not amount to any, um,
12 ineffective assistance, at least from a -- a
13 constitutional, um, basis, we'd certainly need to
14 have an outcome before that could ever be
15 determined.

16 This Court also is aware that, uh,
17 regarding the appearance of propriety, that is,
18 if the Court, uh, decided to act under its
19 supervisory authority, uh, that the State, uh,
20 was requesting, uh, an evidentiary hearing, not
21 only as to the circumstances surrounding the
22 taking of the, uh, May 3, uh, statement, um, but
23 what investigation, if any, the State Public
24 Defender, uh, performed in coming to their, uh,
25 indefensible representation conclusion.

1 Uh, also that, uh, this Court
2 understands the State's concern as to
3 Mr. Kachinsky's performance, or the appearance of
4 his performance, having an implication on the
5 admissibility of that, uh, May 13 statement, this
6 Court understands that we will need a hearing,
7 um, regardless, on, uh -- on that particular
8 issue.

9 And so, um, I now hear Mr., um, Dassey,
10 uh, although not citing any specifics as to what
11 Mr. Kachinsky won't do for him, uh, hear his, um,
12 stated belief that Mr. Kachinsky is not on his
13 side. It is the defendant's, uh, Sixth Amendment
14 right, after all, and obviously if this Court is,
15 uh, persuaded that Mr. Dassey's making this
16 decision, uh, of his own free will, that it's
17 freely, voluntarily, without, uh, coercion or,
18 um, anything along those lines from family
19 members or outside influences, then the Court
20 certainly is free to grant, uh, Mr. Dassey's
21 request and, in turn, Mr. Kachinsky's, uh, motion
22 to withdraw. Other than that, Judge, the State
23 has no further position. Thank you.

24 THE COURT: All right. I -- I believe I
25 understands -- understand the State's position. I'm

1 not necessarily sure -- In fact, I don't agree with
2 it. I don't agree with the position the State has
3 with respect the evidentiary hearings on this
4 matter. Uh, I do understand that, uh, most, if not
5 all, ineffective assistance of counsel motions
6 are -- are held after the matter is over so there is
7 a result that one looks at. But I think we have
8 something a little bit different here.

9 Uh, Counsel is, of course, correct. The
10 Sixth Amendment to the U.S. Constitution, as well
11 as Article I, Section VII of the Wisconsin -- the
12 Wisconsin Constitution guarantee a defendant,
13 such as Mr. Dassey, in criminal cases the right
14 to counsel.

15 Uh, the U.S. Supreme Court, in a case
16 called **Wheat v. The United States**, at 486 U.S.
17 153, specifically at page 159, said, while the
18 right to select and be represented by one's
19 preferred attorney is comprehended by the Sixth
20 Amendment, the essential aim of the amendment is
21 to guarantee an effective advocate for each
22 criminal defendant rather than to ensure that a
23 defendant will be inexorably represented by the
24 lawyer whom he prefers. End of the quote.

25 Now, **Wheat** was a case involving a court

1 overriding a defendant's desire for a specific
2 person as counsel. Incidentally, a privately
3 paid, uh, attorney. It has a different factual
4 context than the case that is before us today.

5 Nonetheless, I believe in the body of
6 the case it identifies a number of the courts'
7 and this Court's institutional concerns.

8 Concerns which I believe are applic -- applicable
9 here despite the factual differences in the
10 cases. Uh, those concerns are -- are synthesized
11 or brought together in a Wisconsin case called
12 **State v. Love** at 227 Wis. 60 at, uh, page 81 and,
13 uh, it says as follows:

14 First, the court's institutional
15 interest is in ensuring that criminal trials are
16 conducted within the ethical standards of the
17 profession.

18 Second, the court's institutional
19 interest is in ensuring that legal proceedings
20 appear fair to all who observe them.

21 Third, a court's institutional interest
22 is that the court's judgments remain intact on
23 appeal and be free from future attacks over the
24 adequacy of the waiver or fairness of the
25 proceedings.

1 This Court has previously denied this
2 defendant's request to replace Attorney Kachinsky
3 because the Court did not believe good cause had
4 been shown as required by law.

5 Uh, if we remember back to the June 2
6 hearing, I alluded to a case called **State v.**
7 **Wanta** at 224 Wis. 679, specifically at, uh, page
8 703, which enumerated some examples of good cause
9 that would permit the -- permit the substitution
10 of counsel. Attorney incompetency, conflict of
11 interest, irreconcilable differences, complete
12 breakdown in communication.

13 Now, these are just illustrations.
14 These are not an exhaustive list of what
15 constitutes good cause. But it has to be said
16 that the same showing of good cause is required
17 if the client is seeking to replace appointed
18 counsel or appointed counsel is asking to
19 withdraw from the case.

20 Appointed counsel in cases such as this,
21 and, uh, I'm sure Attorney Kachinsky is well
22 aware of that, can only be relieved of his
23 obligation to defend this defendant if good cause
24 is shown.

25 Here, we have appointed counsel who has

1 lost his public defender certification to accept
2 appointments in Class A through D felonies.
3 Categories in which two of the charges against
4 this defendant fall.

5 Admittedly, this is a prospective
6 decertification, not applicable to this case and
7 subject to Mr. Kachinsky's right to appeal.
8 Nonetheless, and I think this is -- this is the
9 overarching point, it is for actions that took
10 place in this case. He allowed his 16-year-old
11 client, who previous testimony has disclosed to
12 have cognitive ability within borderline to below
13 average range -- range to be interviewed by law
14 enforcement officials without his attorney
15 present.

16 While Mr. Kachinsky sent his
17 investigator with Mr. Dassey on May 13, 2006 to
18 the interview and made himself available by cell
19 phone, that is not in this Court's opinion
20 enough. He is the lawyer for Mr. Dassey. This
21 is a major case. His client is a young man with
22 intellectual deficits. Attorney Kachinsky should
23 have in the course of his representation of
24 Mr. Dassey been there with his client.

25 The Court believes that Attorney

1 Kachinsky's failure to be present while his
2 client gave a statement to investigators, a
3 statement which, according to the special
4 prosecutor's petition filed May 17 supporting his
5 motion to increase bail, provided new information
6 to authorities on the crimes charged here, I
7 believe that constituted deficient performance on
8 Attorney Kachinsky's part. This performance,
9 coupled with the subsequent State Public Defender
10 certification, raises at the least a threshold
11 question of confidence and puts any further by --
12 representation by Attorney Kachinsky of
13 Mr. Dassey under a cloud of uncertainty. This is
14 not the kind of assistance of counsel a defendant
15 should have.

16 I believe the reasons he gave for not
17 being at the interview are insufficient to excuse
18 his presence. His duty in this case in these
19 circumstances was to his client and is to his
20 client.

21 Moreover, whether or not his failure to
22 appear was reported to the State Public Defender
23 by some other attorney inv -- involved in a
24 companion case is neither here nor there. It is
25 his actions about which we are concerned, not who

1 reported them.

2 The Court believes that this episode
3 constitutes good cause for withdrawal and,
4 accordingly, I will grant his motion to withdraw.

5 Additionally, the Court believes
6 Attorney Kachinsky -- Kachinsky's withdrawal is
7 necessary to assure the entire proceeding be
8 viewed as fair and trying to ensure that we can
9 maintain public confidence in the administration
10 of justice and the fair administration of
11 justice.

12 Let me go back again to -- to one of the
13 institutional concerns I mentioned in conjunction
14 with **Wheat v. The United States**:

15 That is the third concern. A court's
16 institutional interest that the court's judgments
17 remain intact on appeal and be free from future
18 attacks over the adequacy or fairness of the
19 proceedings.

20 If this case has to be tried, I want to
21 do my level best to make sure that it is tried
22 only once. The prosecution, the defense, the
23 families involved, the system deserve no less.
24 Accordingly, I -- as I have said, I'm going to
25 grant Mr. Kachinsky's motion to withdraw. The

1 Court proposes to prepare the order and I'll have
2 staff notify the State Public Defender's Office.
3 Anything further for this afternoon, gentlemen?

4 ATTORNEY KRATZ: Just how that may
5 implicate the, uh -- the trial and change of venue
6 dates, Judge. I don't know, um, how the State, uh,
7 may particularly may be, um, included in the, um,
8 decision to, uh, appoint new counsel or how this
9 Court, uh, will be informed of that. I assume we
10 will need some kind of a scheduling, uh, conference,
11 uh, very soon thereafter.

12 THE COURT: Mr. Kachinsky?

13 ATTORNEY KACHINSKY: Uh, Your Honor, one
14 problem that always seems -- occurs in, uh,
15 withdrawal of counsel from cases is getting the
16 file to successor attorney. Uh, if Mr. Dassey
17 would, uh, consent on the record, I can just do
18 that and not have to require the new attorney to
19 go through the paperwork shuffle that --

20 THE COURT: All right. Mr. Dassey, do you
21 understand what Counsel has said?

22 THE DEFENDANT: Yeah.

23 THE COURT: Uh, he has accumulated what I
24 would guess to be a substantial file at this point.
25 Uh, do you have any objection to having that file

1 passed onto successor counsel as soon as that person
2 is appointed?

3 THE DEFENDANT: No.

4 THE COURT: All right. Uh, I'll include
5 that -- I'll include that in the order. And,
6 Mr. Kratz, getting back to you just for a moment,
7 uh, rest assured we'll have a scheduling conference
8 the -- the -- the moment, uh, I'm alerted to whoever
9 it is that's been appointed as successor counsel.
10 Anything else, gentlemen?

11 ATTORNEY KRATZ: Nothing, Judge. Thank
12 you.

13 ATTORNEY KACHINSKY: No, Your Honor.

14 THE COURT: All right. We're adjourned.

15 ATTORNEY KACHINSKY: Thank you.

16 (PROCEEDINGS CONCLUDED.)

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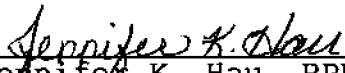
24

25

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

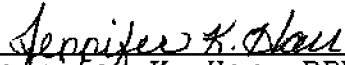
15 Dated this 6th day of September, 2006.

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18 
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
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23
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25

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14 knowledge and ability.

15 Dated this 6th day of September, 2006.

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18 
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
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25

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF,

MOTION HEARING

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** DECEMBER 15, 2006

11 **BEFORE:** Hon. Jerome L. Fox
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
15 SPECIAL PROSECUTOR
On behalf of the State of Wisconsin.

16 MARK R. FREMGEN
17 Attorney at Law
On behalf of the Defendant.

18 RAYMOND L. EDELSTEIN
19 Attorney at Law
On behalf of the Defendant.

20 BRENDAN R. DASSEY
21 Defendant
Appeared in person.

22 * * * * *

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Jennifer K. Hau, RPR

25 Official Court Reporter

COPY

1 THE COURT: This is in the matter of the
2 State of Wisconsin vs. Brendan R. Dassey, Case No.
3 06 CF 88. Appearances, please.

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 appearing as special prosecutor in this case.

7 ATTORNEY FREMGEN: Brendan Dassey
8 appears in person by Attorneys Mark Fremgen and
9 also Raymond Edelstein.

10 THE COURT: All right. Uh, we're here
11 today to discuss a number of motions. I'm going to
12 start with motions that were filed by counsel for
13 the defense on November 10, 2006 and, specifically,
14 I'm going to start with a motion that's captioned,
15 motion to suppress statements, motion to reopen
16 hearing to suppress statement, motion to continue.

17 Uh, in this motion, the defendant
18 acknowledges that a hearing has already been held
19 to suppress statements given by this defendant to
20 authorities on February 27 and March 1 of 2006.
21 But the defendant says that the previous motion
22 failed to specifically assert that the
23 defendant's statements were the product of undue
24 suggestion. The defendant would like to have the
25 hearing reopened or continued so he can present,

1 uh, psychological testimony from an expert
2 witness relating to the suggestibility of the
3 defendant.

4 Uh, defense counsel, Mr. Fremgen, have I
5 fairly stated the motion?

6 ATTORNEY FREMGEN: That's correct, Judge.

7 THE COURT: Do you wish to be heard on it?

8 ATTORNEY FREMGEN: Judge, briefly.

9 THE COURT: Go ahead.

10 ATTORNEY FREMGEN: I don't want to add
11 any more to the motion. I won't repeat what's in
12 the motion itself. However, Your Honor, what
13 we're asking is, essentially -- what we're
14 asking, essentially, is to allow us to supplement
15 what has already occurred.

16 Granted, we understand the Court has
17 already ruled previously on a motion brought
18 before by his previous attorney essentially
19 making the argument that the motion should be
20 suppressed since the -- or excuse me, the
21 statement should be suppressed since the
22 statement wasn't a voluntary statement.

23 And within the general or the larger
24 text of voluntariness is the issue of
25 suggestibility. I believe previous counsel

1 alluded to that in the motion, or in his
2 arguments, and by presenting the, uh, school
3 counselor who addressed the issue of maturity
4 level and intelligence quotient, as well as the
5 mother to essentially provide similar type of --
6 of, uh, layperson testimony about my client's
7 maturity level, I think that is what counsel was
8 attempting to do.

9 We feel, after having reviewed the
10 transcript of the motion hearing, reviewed the
11 tapes, uh, and hired a psychologist from
12 Janesville to go through that, uh, who's offered
13 us a tentative opinion that he believes that the
14 statements could potentially be unreliable based
15 upon undue suggestibility, we would like to
16 reopen that motion hearing, bring forth that
17 additional evidence to support what I think has
18 been tacitly attempted, but this would
19 completely, uh -- or would complete that
20 argument, uh, based on that statement.

21 We understand that reliability can still
22 be addressed at trial, but we're asking to deal
23 with this essentially on a -- a pretrial basis to
24 avoid having to, uh, unduly prolong the
25 proceedings at trial to raise the issue and have

1 the doctor testify at that time on the issue of
2 reliability in front of the jury. Thank you.

3 THE COURT: Response, Mr. Kratz?

4 ATTORNEY KRATZ: As to Mr. Fremgen's last
5 statement, his, um, claim that this can obviously be
6 addressed at trial, or a claim of it being a false
7 confession can obviously be raised, uh, is not
8 necessarily an accurate statement. There will have
9 to be a showing, uh, made at a pretrial motion to
10 allow such a -- a course to occur.

11 That having been said, Judge, this Court
12 did make, uh, independent analysis and review of
13 the statement itself. It was from the
14 defendant's own words, from the defendant's own
15 statement that this Court made specific rulings
16 as to suggestibility, as to undue or improper
17 influence by law enforcement, and as this Court
18 is aware, uh, made a detailed set of findings
19 that, in fact, uh, Mr. Dassey's statement was a
20 product of his own free will and not, uh,
21 improper suggestibility which is, of course, the
22 legal standard.

23 Uh, to allow at this time, uh, review or
24 a revisiting of that motion, uh, is something not
25 supported by Mr. Fremgen's motion. The issue of

1 voluntariness was fully litigated in a previous
2 hearing. I'd urge the Court then deny the
3 motion.

4 THE COURT: Any reply?

5 ATTORNEY FREMGEN: I -- I would -- Well, I
6 agree with, uh, Counsel in regards to there would
7 have to be some sort of pretrial motion in regards
8 to the issue of trial testimony. But as far as
9 having fully, uh, uh, addressed the issue at motion
10 hearing, that is essentially what we're arguing,
11 that we don't believe it has been fully addressed.
12 There wasn't a -- for instance, somebody who can
13 offer expert testimony as to the issue of
14 suggestibility, uh, who has actually met with
15 Brendan and -- and reviewed the tapes, versus just
16 the counselor that would simply say -- that simply
17 said at the motion hearing, he had an IQ between 74
18 and 78, depending upon the year.

19 THE COURT: All right. Uh, as the parties
20 have acknowledged, there was a hearing already held
21 on the statements, the statements of February 27 and
22 March 1. That hearing was held on May 4.

23 Uh, many of the -- the objections that
24 prompted that hearing were the same ones being
25 raised currently by Counsel. Counsel here takes

1 a -- a slightly different tact by suggesting
2 that, uh -- in fact, that this defendant was
3 suggestible, that apparently was being led by,
4 uh, the interviewers to simply answer what they
5 wanted him to answer in a way that they wanted
6 him to -- to answer it.

7 Um, the transcript shows -- and I've
8 reviewed the transcript -- shows that we had
9 three witnesses. We had, uh, the defendant's
10 mother testify, as well as, uh, Investigator
11 Wiegert, who was one of the interviewers, and we
12 had a school psychologist from the Mishicot
13 School District, Kris Schoenenberger-Gross, who
14 offered some testimony on the defendant's
15 intellectual, uh, capabilities.

16 Uh, the issue of suggestibility appeared
17 to have been raised very directly into the course
18 of the hearing and I'm -- I'm going to advert
19 here, very briefly, to the transcript, and
20 specifically page 44, and this is, uh, Mr. Kratz,
21 asking a question:

22 Question: Now, Investigator Wiegert, to
23 ensure the accur -- accuracy or truthfulness of
24 information you're receiving sometimes from
25 either witnesses or suspect, there's a tech --

1 tactic or a strategy which includes deliberately
2 providing false information. That is, providing
3 information about the case that you very well
4 know never happened. That it didn't happen. Are
5 you familiar with that strategy or tactic?

6 Answer: Yes.

7 Was that --

8 Question: Was that employed in this
9 case?

10 Answer: Yes, it was.

11 Questions: And, uh, could you describe
12 for the Court why that was used and, uh, what,
13 uh, results you got therefrom?

14 Answer: Well, the reason you do things
15 like that is to, um, see if the witness is going
16 to go along with the false statements or if he's
17 going to stop you and correct you. Um, and when
18 we did that with Mr. Dassey, when we gave him
19 false information, he would deny it, stop us, and
20 he would correct the information. And that the
21 purpose is to make sure that he's not just going
22 along with everything we're saying and to see
23 that he is telling us the truth. And we did
24 that.

25 That's the end of the quote from -- from

1 the transcript. And that last portion came from
2 page 45.

3 Investigator Wiegert went on to testify
4 to a couple of specific instances where false
5 information was given to Mr. Dassey and
6 Mr. Dassey rejected it as being part of anything
7 that he knew about.

8 Uh, the Court has viewed those tapes as
9 well as and knows that there were other instances
10 in which false information was given to
11 Mr. Dassey and he rejected -- he rejected the
12 content and context of the information.

13 I think the -- the question you raise
14 has already been considered. We spent a fair
15 amount of time at that hearing. Uh, I see no
16 reason to -- to go back to either continue it or
17 to try to supplement that record. I thought the
18 findings of fact made at that hearing considered
19 all of the relevant personal characteristics of
20 this defendant, and based on those relevant
21 personal characteristics, as well as the
22 interview that was had of him on those two days,
23 February 27 and March 1, I concluded that the
24 statement should not be suppressed because it was
25 a product of his free and unconstrained will.

1 Uh, I see no reason to either change
2 that conclusion or go back and reconsider it.
3 Accordingly, I'm going to deny your motion.
4 Specifically, I'm going to deny the three --
5 three avenues, or -- or the three, um, items of
6 relief that you're asking for on page two of the
7 motion; a continuance of the motion hearing to a
8 later date to accommodate the completion of the
9 psychological testimony and anticip --
10 anticipated testimony, uh, B, the right to pursue
11 this motion as to the suppression of the February
12 27 and March 1, 2006 statements as having been
13 involuntary, unknowing and unintelligent in light
14 of the overly suggestive nature of the
15 questioning.

16 Seeing in the event the Court finds that
17 the issue has been previously tried, the right to
18 reopen the hearing in light of the newly
19 discovered evidence in the form of expert
20 testimony as to suggestibility, Court denies all
21 the requested, uh, items of -- of relief.

22 Court then moves onto the second motion
23 we are going to consider here, specifically the
24 motion to reopen the preliminary hearing because
25 of ineffective assistance of counsel.

1 Uh, the preliminary hearing is an early
2 stage in a prosecution at which the State has to
3 show evidence that probable cause exists to
4 believe that a felony has been committed and that
5 the defendant has committed a felony.

6 In this instance, the counsel at that
7 time representing this defendant waived the right
8 to a preliminary examination. Uh, Counsel now
9 wishes us to go back to that stage. He says that
10 the preliminary examination should not have been
11 waived, or suggested shouldn't have been waived,
12 at least under the circumstances that it was
13 waived. Counsel says in his petition supporting
14 his motion that the then counsel -- appointed
15 counsel -- representing this defendant did not,
16 uh, discuss with any specificity the allegations
17 in the Criminal Complaint. He didn't adequately
18 discuss the purpose of the preliminary hearing,
19 the special procedures and circumstances, and,
20 further, that, uh, then that time appointed
21 counsel may not have understood the distinction
22 between two different kinds of preliminary
23 hearings; one found at 970.03 and one found at
24 970.032. Um, is that, uh, a reasonably accurate
25 summary of your motion, Mr. Fremgen?

1 ATTORNEY FREMGEN: Correct, Judge.

2 THE COURT: Do you wish to be heard on it?

3 ATTORNEY FREMGEN: Judge, if the Court
4 would, uh, allow, I wish to be heard essentially on
5 both at the same time. My arguments for both kind
6 of overlap.

7 THE COURT: That's fair. Let me then
8 just touch upon the third motion. Both of these
9 motions, uh, the second and third motions here,
10 are based on what this counsel says is
11 ineffective assistance of the counsel
12 representing Mr. Dassey at the time of the events
13 mentioned in these separate motions, uh, were
14 made, uh, that fact that each particular
15 counsel -- And there are two different
16 appointment of counsels here. There was an -- an
17 initial of counsel representing him at the
18 preliminary hearing stage and then another
19 counsel representing him at a stage when he
20 apparently gave a separate statement to law
21 enforcement authorities on May 13, 2006 in the
22 absence of his lawyer but with, apparently, the
23 assistance of a private investigator who was
24 employed by that lawyer.

25 The grounds for both these motions are

1 ineffective assistance of counsel. Uh, why don't
2 you address both them, then, Mr. Fremgen.

3 ATTORNEY FREMGEN: Judge, if the Court
4 recalls at a -- a later, uh -- or, excuse me -- at
5 an earlier status conference, the Court and State
6 requested some additional authority from defense to
7 support our purpose or the basis for our argument.
8 Uh, we -- I can't say I've conducted exhaustive
9 research, but certainly hours of research into the
10 issue of ineffective assistance of counsel. And
11 other than the case that we cite essentially for
12 the -- for the dicta in that case, I don't believe
13 there are any other cases on point on this issue in
14 Wisconsin.

15 Now, I think that -- it doesn't
16 necessarily preclude us from bringing the motion.
17 I think it just, uh, raises more of a unique
18 situation for the trial Court versus a precedent
19 it must follow from previous case law. So,
20 essentially, there's two reasons why we believe
21 that an evidentiary hearing into this issue, uh,
22 is appropriate and we would be asking for that.

23 First, is, uh, despite the, uh, case law
24 that seems to overwhelmingly suggest that
25 ineffective assistance of counsel is reserved for

1 post-conviction proceedings, there's no case that
2 expressly rejects the proposition that the issue
3 can be or should be addressed at the trial level
4 before it actually gets to the point of a
5 potential post-conviction, uh, matter.

6 **State vs. Armstead** is the case that I
7 cited in my -- my motion, uh, and it's the dicta
8 that's within that case and, uh, granted, it is
9 essentially a paragraph or even less, but the
10 **Armstead** case implies that a trial court may
11 entertain an ineffective assistance motion prior
12 to the conclusion of the case if the defendant
13 can show that the alleged conduct is not a
14 hypothetical deficiency or it's premised on
15 the -- or -- and that's not premised on the
16 possible existence of future ineffective conduct.

17 I -- I think what **Armstead** -- in the
18 **Armstead** case there was an interlocutory appeal
19 that came from a -- a -- a preliminary -- waiver
20 of a preliminary hearing similar, somewhat
21 factually, to the case here.

22 Uh, and in that case, the defendant was
23 arguing essentially on interlocutory appeal that
24 his trial attorney didn't know what he was doing
25 and wasn't offering, uh, good advice in regards

1 to the preliminary hearing and potentially other
2 advice at other critical stages of the
3 proceedings.

4 Um, in this case we feel we have a
5 different factual situation. It's not a
6 hypothetical and it's not future conduct, the --
7 the -- the crux of the -- the Complaint.
8 Essentially, it's the, uh -- what the two prior
9 attorneys have, uh, already, uh, done and, that
10 is, they've inadequately, uh, provided
11 representation to Mr. Dassey in -- in the advice
12 of waiving the preliminary hearing despite the
13 fact that, uh, the attorney at the time,
14 Mr. Sczygelski, had only met with Mr. Dassey for
15 less than a half hour and that Mr. Dassey, from
16 the suppression motion, Court is aware, has a
17 rather immature individual with an IQ of --
18 registered IQ of somewhere between 74 and 78.

19 Um, and coupled with the fact that from
20 a prop -- a -- a subsequent e-mail from that
21 attorney to Mr. Kachinsky, indicated that he
22 wasn't aware of 970.032, which is the issue of
23 original jurisdiction by this Court, and the
24 issue of whether or not, uh, an individual who
25 comes before the Court on original jurisdiction

1 for a 940.01 allegation should be sent back to
2 the juvenile authorities.

3 Second, I think that the pleadings
4 adequately also establish that -- Well, I
5 shouldn't say adequately. But I think there
6 would be a need for an evidentiary hearing to
7 establish whether or not there was a strategic
8 reason for making these decision to have
9 Mr. Dassey meet with, uh, law enforcement, makes
10 additional statements after he's already made two
11 videotape statements, um, without counsel being
12 present, and whether or not there was any
13 strategic reason to waive the preliminary hearing
14 30 minutes after meeting with the defendant at
15 the initial appearance without any offer of
16 settlement or even a possible negoti --
17 negotiation being addressed with the -- the
18 State.

19 Um, I -- I think that we would certainly
20 need to have that additional information. No
21 different than a post-conviction **Machner** type of
22 hearing. And, so, that's what we're essentially
23 requesting then on this case prior to its
24 conclusion.

25 THE COURT: Mr. Kratz.

1 ATTORNEY KRATZ: Thank you, Judge. It is
2 noteworthy that this Court directed Mr. Fremgen to
3 provide the Court with any legal authority that
4 would authorize the relief, uh, that Mr. Fremgen's
5 requesting. Court directed Mr. Fremgen to provide
6 any kind of case law, any kind of authority, didn't
7 even have to be Wisconsin case law, on a ineffective
8 assistance claim that at this stage of the
9 proceedings, that is pre trial, that authorized the
10 relief that he suggested.

11 Mr. Fremgen has told this Court now that
12 he's unable to do so. Why? Because there is no
13 such law. Because this is a premature motion.
14 Because the **Machner**-type hearings, the
15 ineffective assistance of counsel, whether we're
16 talking about, uh, federal cases, **Strickland v.**
17 **Washington**, or even the Wisconsin cases that
18 Mr. Fremgen cites. Uh, the, uh, the **Armstead**
19 case or the **Pitsch** case, P-i-t-s-c-h, is how
20 that's spelled, talks about the prejudice prong
21 being that the defendant was deprived of a fair
22 trial. We aren't at the trial stage and so
23 there's absolutely no way for this Court to make
24 a finding as to whether or not Mr. Dassey's trial
25 is going to be fair.

1 Mr. Fremgen claims that Mr. Kachinsky's
2 decisions in his, uh, attempts to gain a, uh -- a
3 favorable disposition for his client, uh, was,
4 uh, in fact, ineffective. Mr. Kachinsky has
5 given this Court in prior pleadings, uh, a number
6 of reasons -- strategic reasons -- why he was
7 attempting to, uh, act in the best interests of
8 his client.

9 Mr. Fremgen also claims that
10 Mr. Sczygelski, the first attorney in this case,
11 was deficient when he waived the preliminary
12 hearing.

13 But when you have a four-hour videotaped
14 confession, and when the State's responsibility,
15 uh, almost literally at that preliminary hearing
16 would be to walk into court and to press the
17 "play" button on the confession, uh, even
18 Mr. Fremgen would have to admit that, uh, the
19 defendant would be bound over for trial.

20 Uh, the strategic decision, then, to
21 waive that prelim, the decision for, uh,
22 Mr. Sczygelski and his client, Mr. Dassey, at
23 that time did not have that four-hour confession
24 played publicly, uh, was, in fact, I think, a
25 wise decision. But it isn't something, even,

1 that this Court need reach because the prejudice
2 prong, as I've mentioned, cannot be, um,
3 addressed by Mr. Fremgen.

4 Let me note that it is the defense's
5 burden to overcome the strong presumption that
6 counsel acted reasonably in all of these matters.
7 And the fact that we are pre trial, the fact that
8 Mr. Fremgen cannot guess what's going to happen
9 at the -- the trial, if we have a trial in this
10 case, is the very reason that these matters are
11 not brought pre trial.

12 And, therefore, Judge, because this
13 motion is brought prematurely, because there is
14 no law that I'm aware of, or Mr. Fremgen, uh,
15 that authorizes this remedy at this time in the
16 proceedings, I'm urging the Court once again deny
17 both of these motions. Thank you.

18 THE COURT: Reply?

19 ATTORNEY FREMGEN: Just briefly. Until
20 **Gideon** argued for court appointed counsel, there's
21 no precedent that said a court must provide defense
22 counsel to the indigent. Until **In re Gault**
23 (phonetic) argued the same, there's no precedent
24 that said the Court had to provide counsel for
25 juveniles. And until **Brandar** (phonetic) argued that

1 his rights were violated by the fact that the police
2 didn't inform him of his due process rights, no
3 precedent provi -- provided that protection to
4 defendants.

5 Just because it hasn't been done before,
6 doesn't mean the Court can't do it. That's what
7 we're asking the Court to do.

8 THE COURT: I'm not so sure that last
9 statement, just because it hasn't been done before
10 means this Court can't do it, is -- is factually
11 correct. But the Court, uh, has considered both
12 these motions.

13 The first of the -- the -- the two
14 relates to a claim of ineffective assistance of
15 counsel, uh, at the preliminary hearing stage,
16 because defense counsel at that time waived the
17 right to the preliminary hearing.

18 Uh, the second of the motions relates to
19 an ineffective assistance of counsel claim that
20 concerns an interview given on May 13, 2006 by
21 this defendant to law enforcement agencies, or
22 law enforcement agents, at which the defendant's
23 counsel was not present and it was given with the
24 permission of that counsel.

25 Ineffective -- And I did a fair amount

1 of research on this myself. Not necessarily on
2 Wisconsin law because, uh, that was reasonably
3 easy to research, but I -- I researched some
4 hours of federal case law to try to find some
5 case that said an ineffective assistance of
6 counsel claim could be raised in a pretrial
7 setting. I couldn't find anything. Uh, all of
8 it relates -- and I'm not saying there doesn't
9 exist a case or cases out there -- but if they
10 are, they're few and far between, and they're
11 certainly ones I didn't see.

12 Ineffective assistance of counsel is a
13 motion that is raised exclusively as a post-trial
14 motion in Wisconsin. It then gives rise to what
15 is called a **Machner** hearing. We've heard that
16 term discussed. And that is, uh -- derives from
17 a case called **State v. Machner**.

18 There is a two-prong test for
19 ineffective assistance of counsel. The first
20 prong is that the performance of the lawyer must
21 be deficient. Must not have met standards that
22 would typically be met by lawyers practicing in a
23 reasonable manner in that area of law.

24 The second prong -- prong, uh, says that
25 the person bringing the motion must affirmatively

1 show the reasonable probability but for counsel's
2 unprofessional errors a result or proceeding
3 would have been different. And I'm -- I'm citing
4 here from a Wisconsin case call **State vs. Hicks**
5 at 195 Wis. 2d, uh, 620, uh, specifically at page
6 632.

7 Uh, Counsel, in support of his motion
8 cites a case called **State v. Armstead**,
9 220 Wis. 2d 626 at page 636, and he said, what he
10 refers to as dicta here, and I think he's
11 probably correct, dicta means the Court is simply
12 saying this, it may not have the -- the full
13 force of law, but the Court considers the
14 question of ineffective assistance of counsel in
15 the context of a pretrial motion.

16 I'm going to read from that case, and
17 it's a -- it's a short paragraph, and that's all
18 that's here. The court says as follows:

19 Quote, **Armstead** appears to claim that
20 her trial counsel either has been or currently is
21 providing her with ineffective assistance because
22 her counsel, who is unable to determine the
23 meaning of Section 983.183 and 970.032 of the
24 statutes does not know whether to advise her to
25 plead guilty or go to trial.

1 In order to prove ineffective assistance
2 of counsel, a defendant must show both deficient
3 performance and resulting prejudice. At this
4 point **Armstead** has not pleaded guilty to or been
5 convicted of any crime. Even if her counsel had
6 been or currently is providing **Armstead** with
7 ineffective assistance, the possibility that
8 **Armstead** will actually be prejudiced by that
9 alleged ineffective assistance, amounts to a
10 hypothetical and future fact. I've omitted some
11 citations from the -- the -- the quote.

12 That's precisely where we're at here.
13 Whether or not there has been ineffective
14 assistance of counsel is exclusively a post-trial
15 motion and we will not know until something has
16 happened, a trial has happened, a conviction has
17 been had or not had, whether or not counsel has
18 been ineffective and whether or not that
19 ineffectiveness has prejudiced the result of --
20 of -- of the -- of the trial, the result of the
21 case.

22 Um, under those circumstances, really,
23 the Court has -- has no other alternative,
24 Counsel, but to deny both your motions..

25 All right. Um, predecessor counsel

1 filed on March 17 a motion for change of venue.
2 Uh, current counsel has supplemented that motion
3 with additional materials that have been supplied
4 to the Court on December 6, 2006. The materials
5 are on the -- the clerk's desk, they're in boxes
6 and in folders, and I'll allude to those in a
7 minute.

8 Under Wisconsin law, specifically
9 Section 971.19, venue, which simply means the
10 place of trial, is supposed to be in the county
11 where the alleged act or crime was committed.
12 971.22 of the statutes permits the Court to move
13 the place of trial to another county if the
14 defendant shows to the satisfaction of the Court
15 that there is a reasonable likelihood that an
16 impartial jury cannot be impaneled in the county
17 in which the trial should be held.

18 If the defendant makes such a showing,
19 the Court can move the entire trial to a
20 different county or, under certain circumstances,
21 choose the jury in a different county outside the
22 area, in this case the media area, of -- of the
23 county in which the crime is committed, and try
24 the case in the county in which the -- the crime
25 was committed.

1 To support his motion, the defendant has
2 filed with the Court the following:

3 An index of TV coverage from the four
4 major network stations in Green Bay. Those show
5 the dates and titles of the television
6 transcripts used by each station in its coverage
7 of Teresa Halbach's disappearance and events
8 associated with the investigation of her death
9 and the prosecution of the persons charged in
10 that death.

11 Uh, the defendant has also filed two
12 boxes -- and those are the ones on the clerk's
13 table that have been marked as exhibits -- two
14 boxes, an expandable file and CD-ROM of
15 television news scripts relating to the
16 disappearance of Ms. Halbach, the subsequent --
17 subsequent investigation, the arrest and
18 prosecution of Steven Avery and Brendan Dassey
19 for her death and a wrongful death suit.

20 There is, as well, a CD-ROM of newspaper
21 articles appearing in the Manitowoc Herald Times
22 that has been filed as part of the defendant's
23 submission. And, lastly, the defendant has filed
24 a brief supporting his argument to change venue
25 in this particular case.

1 Counsel, do you wish to be heard on this
2 motion?

3 ATTORNEY FREMGEN: Again, Judge, I'll try
4 to be brief. Rather than point to particular dates,
5 what we had prep -- had attempted to do is provide a
6 list for both the State as well as the Court of the
7 dates in which there was television coverage of --
8 of the -- just the Halbach disappearance and arrests
9 of the two individuals involved in -- in -- in -- in
10 the, uh, disappearance, and now the charges of first
11 degree intentional homicide.

12 It's impossible to actually, in our
13 opinion, to remove one from the other.
14 Oftentimes, in many of these, uh, reports,
15 especially after, uh, March 1, whenever Mr. Avery
16 was in court or there was a -- a television
17 update on the case would refer to Mr. Dassey as
18 well.

19 There were times within many of the, uh,
20 television reports and, uh, the -- and the print
21 reports that some of the details of the, um,
22 allegations were released. At times there were
23 comments attributed to law enforcement. There
24 was a press conference with the State and law
25 enforcement. Um, there was comments in regards

1 to the statements, the videotape statements. And
2 there was also, in various broadcasts, such
3 terminology as "gruesome" and "torture."

4 The -- And -- and -- and one other
5 matter, I know we're not looking into the future,
6 but I will assume that come February 5 when
7 Mr. Avery's trial starts, this will all start up
8 again as far as the publicity. And I will also
9 assume that since it's been that way since
10 Mr. Avery's, uh -- or since Mr. Dassey's, uh,
11 charge, that every time they bring up one name,
12 they always bring up the other. That
13 Mr. Dassey's name will be brought up as the other
14 person charged, the nephew, etc.

15 Now, I believe that the transcripts --
16 there's approximately 150 transcripts from Fox 11
17 that are relevant transcripts and, oftentimes,
18 there would be broadcasts at five, six, noon,
19 five in the afternoon, six again, and then ten
20 o'clock. And, so, when on the index when I
21 indicate one day, it could be, at times, six or
22 seven different broadcasts in that day. Not
23 always, but often that was the case as well.

24 There were about 110 telecasts of WBAY,
25 50 telecasts of WGBA, NBC, about 120 telecasts of

1 WFRV, as well as the, uh, Times Herald (sic)
2 articles, between 25 and 30.

3 I think it would be fair to state, that
4 I don't believe the State would -- would even
5 disagree that this case has drawn some extensive
6 regional coverage. There have been, as I noted,
7 many articles and reports about Mr. Dassey,
8 Mr. Avery, and there have been, uh, comments from
9 the families. Both sides. From the -- from the
10 Avery family as well as from the Halbach Family.

11 And -- and, as I pointed out, I'm
12 expecting that will probably increase two-fold
13 when the Avery trial starts in February.

14 But, because of the graphic nature of
15 many of the -- the alleg -- of the allegations
16 that are -- been publicized, and the press
17 conferences, and the law enforcement comments,
18 the severity of the offense and the notoriety
19 this case has gained, I think that, due to the
20 saturated news coverage, and the dissemination of
21 these graphic details, and reactions from family
22 members, that the local jury pool is -- is all
23 too aware of this case, and would be very
24 difficult to, uh, pick a unbiased or uneducated
25 jury in regards to the publicity which would

1 result in -- what we believe, unfortunately, in
2 an unfair trial for Mr. Dassey.

3 And for that reason, we believe that,
4 uh, change in the venue -- And we're only asking
5 for a jury from another, uh, county. We do
6 believe that that would be an undue hardship on
7 both families, Mr. Dassey's family as well as the
8 Halbach family, to have to up -- uproot and move
9 to another county for the trial. We don't
10 certainly think that's appropriate. But we do
11 believe that bringing a jury from a different
12 county would be.

13 THE COURT: Mr. Kratz.

14 ATTORNEY KRATZ: Thank you, Judge.
15 Mr. Fremgen -- and, once again, I'm going to start
16 at the end of his argument rather than at the
17 beginning -- claims that, uh, the Court is to strive
18 to find some uneducated -- and that's the word he
19 used -- some uneducated jury. I suspect that he's
20 talking about, uh, some jurors who don't know
21 anything about the case. And that, of course, is
22 not the, uh, jury pool, uh, that, uh, trials are
23 made up of.

24 Uh, we expect our jurors to be educated.
25 We expect our jurors to watch the news and to

1 know something about the case as, uh, publicly
2 discussed as this one. The prohibition, of
3 course, is if a juror has, uh, made up his or her
4 mind about the guilt or innocence of a, uh,
5 defendant based upon what they have read or what
6 they have seen, not based upon the coverage
7 itself.

8 And, so, it's impossible at this time to
9 determine whether or not such a jury pool exists.
10 That is, whether or not we would be able to find
11 12 jurors who have, uh, not either made up their
12 mind or are willing to set aside what they've
13 already heard to decide the case.

14 I think it's important to note that, uh,
15 Judge Willis, in a companion case, in State v.
16 Avery, uh, is allowing the jury to be selected
17 from this very county, uh, from Manitowoc County.
18 And so I think whether or not a jury pool is
19 available, uh, has already been decided.

20 But this is a different case and I will,
21 uh, concede that with Mr. Dassey's case happening
22 second, there is the possibility of additional
23 pretrial publicity. I'm going to urge the Court
24 to not rule on the motion to, uh, change venue at
25 this time but to wait to see what kind of

1 coverage, what kind of, um, uh, events occur
2 between now and Mr. Dassey's trial.

3 Mr. Fremgen did not talk about the eight
4 factors that Wisconsin, uh, considers. Uh, and,
5 uh, I just need to mention those briefly, Judge,
6 just because we have to make a record as to those
7 factors for -- for change of venue.

8 The, uh, **Fonte** case, F-o-n-t-e, suggests
9 that this Court consider:

10 Number one, the inflammatory nature of
11 any publicity.

12 Number two, the timing and specificity
13 of the publicity.

14 Number three, the difficulty that there
15 may be in selecting a jury.

16 Number four, the extent to which jurors
17 are familiar with the publicity.

18 Number five, the defendant's use of
19 peremptory challenges.

20 Number six, our, that is the State's,
21 participation in any adverse publicity.

22 Number seven, the severity of the
23 offense.

24 And, number eight, the nature of the
25 verdict.

1 Well, the Court can see that several of
2 those factors can't be addressed until the time
3 of the attempt to select a jury. And so, again,
4 my suggestion is, um, to wait.

5 However, if the Court is to rule today,
6 there are, uh, some, uh, points that I feel I
7 need to raise with the Court.

8 As to the nature of the publicity, the
9 States argues, as it did in the Avery case, that
10 the coverage has been factual, has been
11 noneditorial to the most part, and not
12 prejudicial. When we look at the manner in which
13 the, uh, publicity has been presented, it may
14 inform jurors. As I've argued, that's not a bad
15 thing, uh, but certainly is not, uh, intended to
16 sway jurors.

17 This is, in fact, uh, a highly covered
18 case, but it should be. The facts of the case
19 itself lend to intense, uh, media attention. Let
20 me also state, though, Judge, that that raises
21 the second factor, and that is the timing of the
22 publicity. Most of the publicity on these two
23 cases, and I guess I should, uh, distinguish
24 Mr. Dassey's from Mr. Avery's coverage, although
25 Mr. Fremgen lumps them together, I'm not sure if

1 he believes the Court to do that, but most of the
2 publicity has been in the early stages, uh, of
3 this case. Almost, uh, and, in fact, more than a
4 year before, uh, the trial.

5 I will note that the last public
6 statement by, I think, any of the lawyers in the
7 case, uh, in the Avery case was, uh, November 11
8 of '05, and in the Dassey case was March 2 of
9 '06. That's going to be over a year before the
10 trial in this case.

11 I've argued, and I think that the Avery
12 Judge, uh, adopted the conclusion, that the
13 State's complied with rule 3.6. That is, the
14 statements that have been made in both of these
15 cases have been in full compliance with the rules
16 established by the Office of Lawyer Regulation.

17 Again, Judge, we don't know whether
18 we're going to have difficulty in selecting a
19 jury. We don't know how familiar the jurors are
20 going to be with the publicity. We don't know
21 Mr. Fremgen's use of peremptory challenges,
22 although he will certainly have those.

23 And, then, when the Court considers the
24 last primary factor, that is something you can
25 consider before trial, that is the severity of

1 the offense, homicide in these related charges
2 are, in fact, the most serious, uh, and would
3 expect intense media scrutiny.

4 This Court has a responsibility to
5 balance the public's right to information. Uh,
6 that is the, uh, right to know what's going on
7 from the danger of, uh, potential prejudicial
8 information being disseminated. Once, again,
9 because I think the information has been straight
10 forward, because of the timing, because it's been
11 so long before, uh, the trial in Mr. Dassey's
12 case, I'm going to urge the Court at this time to
13 find that there has been, uh, no proof brought by
14 Mr. Fremgen to establish those seven factors.

15 Let me also indicate, quite candidly,
16 however, that Mr. Fremgen, I believe, uh, may be
17 in a position after the Avery trial, uh, after
18 the middle of March, let's say, uh, to, uh,
19 submit additional facts to this Court, uh, at
20 which time, as we're closer to Mr. Dassey's
21 trial, at which time he may, in fact, be able to
22 establish those, uh -- those factors.

23 But because we're using a Manitowoc jury
24 in the Avery case, uh, I would ask the Court to
25 be cautious, uh, in making, uh, too many findings

1 of fact at this time that it cannot be possible
2 to select a fair jury from Manitowoc because that
3 is, in fact, what we intend to do, uh, in a
4 related case.

5 I hope as I say that, this Court is
6 sensitive to, um, my attempts to make the record
7 in both cases, because I have to. Because I have
8 to urge this Court, uh, to, uh -- to not, um,
9 make a specific findings of fact here that may
10 have some collateral impact on another case, uh,
11 that we are establishing.

12 I thank Mr. Fremgen for his concession
13 that if we are going to, uh, have a -- a change
14 of venue, that we bring in a jury from another
15 county. Certainly the victim's family has to be
16 considered. Uh, if, in fact, the Court is, uh,
17 leaning that way, shall we say, uh, then, uh, it
18 is the State's preference, obviously, that we try
19 the case hear in Manitowoc County using a jury
20 from a remote county. Thank you very much.

21 THE COURT: Mr. Fremgen.

22 ATTORNEY FREMGEN: Thank you. I agree with
23 Mr. Kratz as to the -- the need to review the
24 factors. In my brief in support with the
25 additional, uh, supplemental information cites a

1 Court of Appeals case, and I refer to what I believe
2 are the four major factors, and I agree with
3 Mr. Kratz that there are seven, but those aren't
4 exclusive factors as well.

5 I think the Court needs to also be
6 cognizant of the fact that there might be a need
7 for a number of "for cause", uh, challenges as
8 well, not just the peremptory challenges, which I
9 think is implied in that factor. This would
10 require a larger than normal jury pool to be
11 brought in. Could potentially require, uh,
12 almost a size of two jury pools in order to be
13 able to accommodate the potential "for cause"
14 challenges.

15 Absent the change of venue, there's a
16 likely -- there would likely be a need to conduct
17 individual voir dire in order to avoid tainting
18 the existing jury pool. And I think the whole
19 point of change of venue, based upon the case
20 law, is that the trial court has to anticipate.

21 I agree with Mr. Kratz. I don't know
22 where the publicity is going to, uh, how it's
23 going to actually affect the jury, but we have
24 to -- and actually trial Court has to --
25 anticipate the difficulties in selecting a jury

1 based upon the coverage. It does not,
2 necessarily, limit it to inflammatory nature of
3 the publicity. That there's that separate
4 factor, the extent to which potential jury pool
5 was aware of the publicity.

6 I think that the -- the record reflects,
7 with the number of exhibits, that there certainly
8 has been an extensive coverage of this matter,
9 whether you wish to with -- withdraw Mr. Dassey
10 or lump them into the Avery, slash, Dassey
11 coverage. I think certainly the main focus, or
12 the main point of the reason for change of venue
13 has to be the extent to which the jury is aware
14 of -- of the publicity.

15 THE COURT: All right. Uh, Court has heard
16 the arguments on the motion for change of venue.
17 We've discussed, briefly, some of the factors that
18 the Court is to use in evaluating these motions.
19 Uh, they're -- they're set forth in a number of
20 Wisconsin cases and -- and Mr. Kratz is -- is
21 correct. Many of these cases are cases that have
22 already been tried and they are brought as
23 post-judgment motions.

24 Uh, this is a prejudgment motion and, as
25 I noted before, the defendant has a right under

1 Wisconsin law to be tried by an impartial jury in
2 the county in -- where the crime was committed.
3 Actually, this is, uh, also a constitutional
4 right as -- as well as -- as simply a statutory
5 right.

6 Before a motion for change of venue can
7 be granted, the Court must find that there exists
8 a reasonable probability or likelihood that a
9 trial with an impartial jury cannot be had in
10 Manitowoc County. In other words, that, uh, it
11 will be difficult, if not, impossible to impanel,
12 uh, a -- an impartial jury for this case and --
13 and this case I am, as defense counsel does,
14 lumping together with -- with Avery.

15 Um, among the factors that the Court
16 takes into consideration are some mention by,
17 uh -- by Mr. Kratz; the timing, the specificity
18 of the publicity, the inflammatory nature of the
19 publicity, the nature and severity of the
20 offenses involved, and the permeation of the
21 publicity. And I -- I take it permeation of
22 publicity means not only permeation of so-called
23 adverse publicity, but permeation of any
24 publicity touching upon the alleged events.

25 The Court has reviewed some, though

1 certainly not all, of the materials submitted by
2 the defendant in support of its motion. As a
3 preliminary matter, the Court notes that I have
4 seen no case in my 30-plus years in Manitowoc
5 County that has received anywhere near this
6 amount of -- the amount of news coverage that
7 this case has received in television, print and
8 voice media, internet activity. All have been
9 extensive and intensive.

10 I -- I also will note in response to
11 something that, uh, Mr. Kratz said, the motion
12 for change of venue is exclusively the
13 defendant's motion. It is not the Court's
14 motion, it is not the prosecutor's motion. And
15 the -- in the Avery case apparently a motion had
16 been made and withdrawn. Uh, this motion is not
17 withdrawn. It's been supplemented and it's
18 active and we're ruling on it today.

19 The defendant's brief notes, uh, that --
20 in his appendices index, over 300 separate TV
21 news reports relating to some aspect of the Avery
22 or Dassey cases, and many of these reports ran
23 several or more times a day as he noted in his
24 argument.

25 Standing alone, the -- the sheer volume

1 of the -- the publicity, uh, might satisfy the --
2 the factor of permeation of publicity, and I'm
3 not even speaking here of the -- the additional
4 newspaper, voice media and -- and other media
5 publicity. But that alone would not, uh, suggest
6 or conclusively tell us that -- that this is
7 prejudicial to the extent that the -- the Court
8 is fearful that an impartial jury might not be
9 able to be impaneled.

10 The details of, uh, Mr. Dassey's alleged
11 admissions, which form the basis of the State's
12 complaint against him, were disseminated in the
13 Complaint itself and in a televised press
14 conference, I believe, on March 2, 2007, which
15 was -- the conference itself was apparently
16 preceded by a warning to children under 15
17 because of the nature of the Complaint's details
18 not to, uh, not to watch the conference.

19 From that date on, uh, some or many of
20 these same details were repeated in many news
21 stories, often in connection with words like
22 "gruesome", "graphic", "very disturbing",
23 "troubling", "torture." And these are all words
24 that -- that should be in quotation marks because
25 those were the actual words used as -- as, uh,

1 describing the events and -- and this defendant's
2 participation in those events.

3 The defendant's brief notes that some
4 news stories quoted an investigator, presumably
5 anonymous, saying that this defendant was, quote,
6 a willing participant in murder, end quote.

7 Uh, the Court also is sensitive to the
8 argument raised by both sides that this trial
9 follows the Avery trial. And while I think the
10 special prosecutor makes a point saying, well, we
11 could -- we could simply wait until the Avery
12 trial and see what sort of publicity is generated
13 by that, what sort of result, and then -- then
14 make a determination. My feeling is that the --
15 the -- this trial is scheduled so closely on the
16 tail of the Avery trial that, uh, there would not
17 be time to -- to seriously consider and rule on
18 any additional motion.

19 In sum, I believe that the -- the nature
20 and magnitude of the publicity, the fact that it
21 has been consistent and ongoing, as well as
22 permeating this area, that it involves major
23 crimes of a horrific nature, that these factors
24 all combine to lead me to conclude that there is
25 a reasonable likelihood that it would be

1 impossible to impanel an -- an impartial jury for
2 this trial.

3 Accordingly, I'm going to grant the
4 defendant's motion. I am, uh, going to avail,
5 uh -- or as part of that granting, use Section
6 971.225, which, uh, permits the importation of a
7 jury from some other area of the State rather
8 than, uh, moving the trial elsewhere out of this
9 area.

10 I think the -- the standard for having a
11 jury come in here is that it would be too costly
12 to, uh, move, that it would be more expensive to
13 move the trial to another locale. I think that
14 is probably true, although I certainly haven't,
15 uh, gotten an accounting on that, but what
16 primarily motivates me is the fact that there are
17 people here on both -- representing both the --
18 the victim and the defendant who, obviously, are
19 going to be at that trial, and it would simply
20 work another unfairness to -- to make them, uh,
21 go to a trial at some distant venue and spend
22 substantial amounts of money to stay there. So,
23 that motion will be granted.

24 ATTORNEY KRATZ: Judge, if -- if I may, is
25 the Court willing to include in its findings

1 specifically that, uh -- about the inability to
2 select an impartial jury from Manitowoc County, uh,
3 that that would be as of April of 2007? In other
4 words, uh, you're not commenting on whether or not
5 we're going to be able to do that in February in --
6 in a different trial.

7 THE COURT: I -- I am not ruling on
8 anything in the Avery case. I am ruling on a case
9 that is going to be held in April of 2006 after a
10 trial that begins in February of 2006.

11 ATTORNEY KRATZ: Certainly. Yes. Thank
12 you.

13 THE COURT: Gentlemen, any objection to
14 that?

15 ATTORNEY FREMGEN: No.

16 THE COURT: All right. Uh, with respect to
17 the motions that were denied, uh, Mr. Kratz, would
18 you please draft an order? With respect to this
19 motion, uh, would you draft an order, Mr. Fremgen?

20 ATTORNEY FREMGEN: Yes, Judge.

21 THE COURT: Anything else today?

22 ATTORNEY FREMGEN: Two things. In regards
23 to the change of venue motion, will this be then
24 left to the clerk of court to coordinate a jury? Do
25 you wish to have some input from counsel?

1 THE COURT: Um, certainly always happy to
2 hear from counsel. But, typically, what happens is
3 it's the -- the, uh -- it's the judicial assistant
4 and clerk of court working through the district
5 court administrator that -- that, uh, arrives at,
6 uh, a -- a place for jury selection.

7 ATTORNEY FREMGEN: That's fine.

8 ATTORNEY KRATZ: The one issue that I had,
9 Judge, and it's unrelated to any of -- of -- of
10 these motions, it's more logistical in nature, um,
11 this is the first, uh, hearing at which Mr. Dassey
12 appears after having attained the age of majority,
13 uh, and I didn't know if the Court was going to
14 revisit his placement. He's in a secure juvenile
15 facility at this point.

16 Now that he is an adult, and the reason
17 that the Court set forth in its, uh, previous
18 placement of Mr. Dassey was because he hadn't
19 attained the age of majority for adult, uh,
20 jurisdiction yet, uh, if that is going to be
21 revisited, or if the Court wants a formal motion,
22 that's fine. Because this is more of a
23 housekeeping or logistical issue, I raise it now
24 as to how the Court wishes to proceed.

25 THE COURT: Any comment from defense on

1 that?

2 ATTORNEY FREMGEN: Judge, I wouldn't
3 request or require a formal motion, but certainly
4 it's not something I discussed with Mr. Dassey. If
5 I could have time to talk to him --

6 THE COURT: Sure.

7 ATTORNEY FREMGEN: -- about that issue.

8 THE COURT: Sure.

9 ATTORNEY FREMGEN: Do you wish to put, uh,
10 motion in limine schedules -- Want to just do that
11 by phone conference?

12 ATTORNEY KRATZ: I think a scheduling
13 conference with the Court, even after this, uh,
14 hearing, if the Court's willing, might be --

15 THE COURT: Yeah, we'll -- we'll meet for
16 a -- a brief scheduling conference for another
17 interim scheduling order to -- to discuss any
18 additional motions.

19 ATTORNEY FREMGEN: If -- if we have any
20 objection to what Mr. Kratz has requested, um, we'll
21 bring that to the Court and the State's attention.
22 Otherwise we can maybe enter a stipulation to that.

23 THE COURT: With respect to the change of
24 placement?

25 ATTORNEY FREMGEN: Correct.

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THE COURT: Oh. Okay. All right. Nothing further? We're adjourned.

ATTORNEY KRATZ: Thank you, Judge.

(PROCEEDINGS CONCLUDED.)

1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
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18

19 Jennifer K. Hau
Jennifer K. Hau, RPR
20 Official Court Reporter
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF, MOTION HEARING

6 vs. Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** MARCH 26, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

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

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

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

20 MARK R. FREMGEN
21 Attorney at Law
On behalf of the Defendant.

22 RAYMOND L. EDELSTEIN
23 Attorney at Law
On behalf of the Defendant.

24 BRENDAN R. DASSEY
25 Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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I N D E X

WITNESSES

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DR. ROBERT GORDON

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1 THE COURT: This is the matter of the State
2 of Wisconsin vs. Brendan Dassey, Case No. 06 CF 88.
3 Appearances, please.

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 Assistant Attorney General Tom Fallon, Assistant
7 District Attorney Norm Gahn, all appearing as
8 special prosecutors.

9 THE COURT: We are here this afternoon on a
10 motion in limine --

11 ATTORNEY FREMGEN: Judge, uh, Attorneys
12 Mark Fremgen --

13 THE COURT: Oh, I'm sorry.

14 ATTORNEY FREMGEN: That's fine. We're very
15 forgettable. Attorneys Mark Fremgen and Raymond
16 Edelstein on behalf of Brendan Dassey, who also
17 appears in person.

18 THE COURT: You're not forgettable, you
19 just have to be faster.

20 ATTORNEY FREMGEN: I'll remember that.

21 THE COURT: All right. We're here this
22 afternoon on a -- a motion in limine, uh, brought
23 by the defense seeking to ultimately have
24 admitted, uh, expert testimony on the statements
25 made by the defendant, Brendan Dassey, and

1 previously found by this Court to be voluntary.

2 Specifically, the defendant seeks to
3 call a clinical psychologist, Dr. Robert Gordon,
4 to offer an opinion on the psychological
5 characteristics of the defendant as well as his
6 age and intellectual development and whether
7 these factors put him in an increased risk to
8 potentially make a false confession.

9 The defendant has asked the Court to
10 permit this testimony. He has done this by
11 making an offer of proof. In this case, because
12 of the limited availability of the special
13 prosecutor, who was trying the Avery matter, and
14 Dr. Gordon, who will be out of the state for
15 several weeks, the defense provided the Court and
16 the special prosecutor with a five-page written
17 report and an approximate three-hour direct
18 examination of Dr. Gordon on DVD in which
19 Dr. Gordon discusses the methods he used and the
20 findings he made in this case.

21 Today, the special prosecutor has an
22 opportunity to examine Dr. Gordon. The Court
23 will determine whether Dr. Gordon's
24 qualifications in conjunction with his proposed
25 testimony, will assist the jury in trying this

1 condensed to more of a computer generi --
2 generated exhibit and Mr. -- uh, Dr. Gordon will
3 be testifying as to those, if Mr. Kratz has
4 questions of those. And he'll bring to those to
5 the stand as well, and I suppose we'll mark those
6 as exhibits if need be.

7 THE COURT: It -- the DVDs will be marked
8 for purposes of this hearing as Exhibits 1 and 2.
9 I'd ask you, Mr. Kratz -- I -- I can't tell you,
10 obviously to -- to, uh -- with any great
11 specificity -- to limit your examination, but I
12 would hope you could do it within an hour. You may
13 proceed.

14 ATTORNEY FREMGEN: Judge, we're the
15 moving party. I suppose we'll be -- I'll move
16 that Dr. Gordon testify at this time and, then,
17 we'll waive any further direct at this point.

18 THE COURT: All right.

19 ATTORNEY FREMGEN: Dr. Gordon?

20 THE COURT: Come up here, Doctor, to be
21 sworn, please.

22 THE CLERK: Please raise your right
23 hand.

24 DR. ROBERT GORDON,
25 called as a witness herein, having been first duly

1 sworn, was examined and testified as follows:

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

4 THE WITNESS: Please bear with me just a
5 minute, please. My name is Robert H. Gordon,
6 G-o-r-d-o-n.

7 **CROSS-EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q Dr. Gordon, good afternoon. My name is Ken
10 Kratz. I'm special prosecutor in this case. I
11 had the pleasure of watching your direct
12 examination on DVD which, as I understand was,
13 uh, taken sometime in March. I think it was
14 March 12. Is that your recollection?

15 A I recall it was close in time to that. I don't have
16 the exact date, Mr. Kratz. I could look on my, uh,
17 palm pilot if you like --

18 Q That's fine. I --

19 A -- to verify.

20 Q -- I -- I've seen the direct. The first series
21 of questions I have of you, Doctor, is your
22 experience in this particular area. That is,
23 providing testimony regarding suggestibility or
24 vulnerability to suggestibility. Let me ask you,
25 in the state of Wisconsin, on how many occasions

1 have you testified in a trial setting that is
2 before either a judge or a jury in a trial, uh,
3 as to this particular issue? That is,
4 vulnerability to suggestibility?

5 A In a trial or an offer of proof as well?

6 Q I think -- Was my question not clear?

7 A No.

8 Q I asked in -- in a trial, how many times have you
9 testified?

10 A One time. Well, I -- one time to be exact. There
11 may be more. I -- I don't keep record of that. I --
12 I should.

13 Q Well, if it was more than one, would that be
14 something that you'd remember?

15 A Probably not, considering the number of cases I see
16 in given year. And I've been doing this since 1976.

17 Q You've been testifying about suggestibility since
18 1976?

19 A No, that -- I cannot say. Probably, uh, since 1985,
20 1995. I really can't say, Counsel, with any --

21 Q So sometime within that ten-year period, you've
22 been testifying about suggestibility. Is that
23 your testimony?

24 A I -- sometime within that period of time I have
25 testified once in a trial. I have conducted

1 evaluations and also attended and -- presentations
2 and given presentations regarding this. That's very
3 much true.

4 Q Okay. Uh, do you remember in which county that
5 testimony occurred in?

6 A I -- I don't know the name of the county. I know the
7 city was Wausau. I -- I think that's Marathon
8 County, if I'm not mistaken.

9 Q It is. Are you aware, Dr. Gordon, of, um -- And
10 I think in your direct you talked about the, uh,
11 limitations on your opinions that -- that you
12 offer. Um, that wasn't, uh, very artfully asked.
13 Let me try again.

14 Uh, let's start with what you are not
15 offering opinions on. As I understand, that you
16 are unable or unwilling to offer an opinion as to
17 whether any statement, uh, in this case the
18 statement by Mr. Dassey, was true or whether it
19 was not true; is that correct?

20 A That's very correct. It would be unethical for me to
21 do that and I would seriously doubt whether the Judge
22 would even let me do that even if I so chose to do
23 that.

24 Q Do you know the reason for that? I mean, I
25 understand that you have a forensic background,

1 meaning the intersection of the, uh, field of,
2 uh, psychology with that of law. Uh, do you know
3 why you aren't allowed to testify or comment on
4 the credibility of any other witness?

5 A I'm not a human lie detector, and I don't invade the
6 province of the trier of fact when they need to
7 consider very weighty questions regardless of whether
8 it's this matter or a fitness trial or NGI or
9 whatever the case may be.

10 Q All right. You indicated in your direct
11 examination that you performed a battery of
12 tests, uh, pointing you to the ultimate
13 conclusion that Mr. Dassey, uh, was, uh,
14 substantially more vulnerable to suggestibility.
15 Um, do I understand your opinion to -- that that
16 was your opinion?

17 A That was one of my opinions, yes.

18 Q The other opinion had to do with the, um -- or
19 taking the next step or the next leap, if you
20 will, uh, that that somehow, necessarily, means
21 that Mr. Dassey, uh, is also more prone or more
22 apt to give a false confession rather than just a
23 confession. Was that also your opinion?

24 A He's more apt to give a confession. If one's more
25 apt to give a confession, it's, therefore, more

1 likely to give true confessions as well as false
2 confessions.

3 Q And that brings me to the point of why you might
4 be asked to testify and what the jury might gain
5 from your testimony. You understand that you'll
6 only be allowed in this case to testify if you
7 actually add something to the equation? That is,
8 if you assist the trier of fact. You understand
9 that?

10 A I -- my -- my role would be to make a confusing
11 matter less confusing. And if I'm not able to do
12 that, then my role is not in this chair.

13 Q All right. And, so, if your opinion -- And let
14 me just ask you. Is your opinion that Brendan
15 was more susceptible or more vulnerable to making
16 a -- any kind of confession in this case given
17 the constellation of not only his IQ but his
18 personality traits?

19 A Not to quibble, Mr. Kratz, but I think I said he is
20 very suggestible to do that. I used the word,
21 "very." That's the modifier.

22 Q I'm talking about confessions. Are you
23 suggesting that Brendan is more suggestible, uh,
24 or more vulnerable -- you also use the word
25 "vulnerable" -- to providing any confession to a

1 law enforcement official?

2 A True.

3 Q And whether that confession is a true confession
4 or whether that confession is a false confession,
5 I believe you've already conceded, uh, is best
6 decided -- in fact, legally, decided by the trier
7 of fact. By the jury.

8 A I need to correct your que -- your -- your statement.
9 I didn't concede anything. I'm not here to concede.
10 I'm not here to advocate. I'm here to tell what I
11 believe to be the truth based on my evaluation and
12 training. So, maybe --

13 Q Okay. What --

14 A -- if you could restate --

15 THE COURT: Here. One at a time.

16 ATTORNEY KRATZ: I'd ask that he answer
17 the question, Judge. If there's a problem with
18 that, we can --

19 THE COURT: Doctor Gordon, you're starting
20 to get somewhat argumentative in that answer.
21 Just -- just answer the question that -- that is
22 asked of you.

23 THE WITNESS: May I have the question
24 read back, please?

25 ATTORNEY KRATZ: Sure.

1 (Question read back by the reporter.)

2 THE WITNESS: I'm sorry, there -- I
3 don't hear the question --

4 Q (By Attorney Kratz) I'll ask it one more time.
5 Is it your opinion that Brendan Dassey, uh, was
6 more vulnerable than the average person to
7 providing a, um, confession to law enforcement
8 officials?

9 A Yes, sir.

10 Q Before performing your -- Or at least before --
11 I -- I understand that the -- the Gudjonsson, um,
12 Suggestibility Scale was the last, uh, test that
13 you spoke of, but, um, before administration of
14 that test of Brendan, were you able to predict
15 those results? That is, by knowing Brendan's IQ
16 and, uh, personality characteristics, were the
17 results of that test predictive for you?

18 A There's a correlation with those other factors. So
19 if I was asked to speculate about what his scores on
20 the Gudjonsson Scale would be, I could speculate but,
21 uh -- because there's a correlation. But, uh,
22 there's a -- it's not a one-to-one correlation, so
23 that everyone that has a low IQ, everyone that has
24 certain personality characteristics automatically
25 scores certain way on the Gudjonsson Scale, that's

1 not true, and so -- but I -- I can -- I would have
2 some hypotheses.

3 Q Okay. We'll get to Gudjonsson in -- in -- in
4 just a minute. But let's talk about a person's
5 actual ability to resist suggestion. Um, would
6 you agree, Doctor, that, um, an individual's, um,
7 observed ability to resist, um, suggestion would
8 be a better measuring tool or better measuring
9 stick, uh, than Gudjonsson or any of your other,
10 um, psychological testing you use in this case?

11 A Well, I'm not in a position to say what is
12 necessarily better. There are just different tools
13 and different -- it's important to rely on data from
14 a variety of sources. And -- and objective testing
15 is helpful because there are objective norms and
16 standards that you can compare a person to.

17 But it's important, also, to obtain
18 observed data, interview data, collateral data.
19 Um, so I could compare it to going fishing. I
20 mean, you could -- it's good to take live bait,
21 it's good to take artificial lures, and, uh --
22 and not just rely on one or the other because you
23 never know about the day.

24 Q Well, the problem with the fishing analogy in
25 this case is the jury's going to see Brendan's

1 actual interaction with the police; isn't that
2 true?

3 A That's -- that's -- I don't know what's -- That's my
4 understanding would be the case.

5 Q Correct. That's something that you looked at.
6 That was one of the factors that you considered
7 in forming your ultimate opinion; is that true?

8 A That's true.

9 Q Are you aware, Doctor, that, in this case, not
10 from some test results, but in this case, on a
11 number of occasions, Brendan was able, uh, to
12 resist suggestions by law enforcement officers
13 when involved in, uh, his interrogation?

14 A Yes.

15 Q Is it your opinion that you considered those, um,
16 instances of, um, where Brendan resisted those
17 efforts by law enforcement?

18 A Yes, sir.

19 Q Another factor that you considered -- or at least
20 in your direct examination you indicated that you
21 considered -- was Brendan's recantation. That
22 is, that sometime after his, uh, admission, or
23 his statement of culpability, uh, he recanted
24 that statement. Is that a fair characterization
25 of your testimony?

1 A I believe so, yes.

2 Q Could you explain why it is that a recantation or
3 a retraction of a confession is an important
4 consideration for you?

5 A It's an important consideration in that there's a
6 correlation between coerced confessions and the
7 length of time that the recantation took place. The
8 sooner the recantation, the -- it's correlated
9 with -- the research shows it's correlated with more
10 likelihood that there is -- there was a -- a coerced
11 confession.

12 Q Right. And that's where we need to go back to
13 your opinion. Are you now offering an opinion
14 that this was a coerced confession? You've used
15 that term.

16 A No, that's not for me to decide. Um, I'm talking
17 about the defendant's psychological vulnerability
18 and -- and the likelihood that he was suggestible and
19 offered such a statement. So, it's a factor that I
20 considered.

21 Q Well, it's -- it -- it's a -- it's a factor if we
22 assume or if we presuppose that this was a
23 coerced confession. If it wasn't a coerced
24 confession, recantation really doesn't factor in;
25 isn't that true?

1 A True.

2 Q So assuming -- Or if we can get the Judge or a
3 jury to assume that this was a coerced
4 confession, then your placing weight on the
5 recantation would have some meaning; is that
6 right?

7 A Yes, sir.

8 Q All right.

9 A I'm sorry. I didn't -- I thought you were done with
10 the question.

11 Q Are you -- No, I was. Thank you. Are you aware
12 of the circumstances under which Brendan
13 retracted or recanted his admission or
14 confession?

15 A If I -- I don't recall at the present time.

16 Q Do you even know if that was his idea or if it
17 was the idea of another family member that he
18 change his story or change it back to his
19 original statement?

20 A I would be speculating. Although I -- about the
21 dynamics that led to his recantation. If that was
22 what -- I mean, he recanted it, and whether it was
23 false or true, um -- and I know that there was family
24 influence.

25 Q Well, would that be an important consideration?

1 Would it be important for you to know if it was
2 somebody else's idea or if the genesis of that
3 retraction or recantation was from somebody other
4 than the subject who was involved in the
5 interrogation?

6 A Well, it would be important to know because then I
7 would know -- I would have a better idea of whether
8 it was the -- the person -- the defendant making the
9 recantation. But it also would be important because
10 then it would further provide support to the
11 conclusion that he would be suggestible to other
12 people's influence as well.

13 Q I see. So either way it really supports your --

14 A It -- it's a --

15 Q -- your opinion then; right?

16 A It's a wash either way.

17 Q I see. Are you offering an opinion on the -- And
18 we may be quibbling about terms here. But I need
19 to know if this is your opinion on the -- what's
20 called the reliability of, um, Brendan's
21 statements to law enforcement officials?

22 A No, I -- I'm not offering an opinion about that.

23 Q Are you offering an opinion on whether Brendan's
24 statements ought to be believed by anybody,
25 whether it's the Judge or a jury?

1 A Absolutely not. And that -- that's even contained in
2 the first page of my report to Mr. Fremgen dated
3 November 15, 2006.

4 Q I'm -- I didn't see the words "ought to be
5 believed."

6 A Oh, I -- Okay. It's -- it's implied then. Sorry.
7 It just clarifies my role.

8 Q Let me just read you, then, Mr. Fremgen's -- And
9 so you don't feel like you're being tricked or
10 set up, I'm going to quote from Mr. Fremgen's
11 offer to this Court.

12 Doctor Gordon is expected to testify
13 that based upon the evaluation of the defendant,
14 the evaluator's specialized knowledge in the area
15 of psychology of confessions, and his review of
16 relevant research in this regard, that Brendan's
17 Dassey's statements to law enforcement are,
18 quote, not reliable and that they are the product
19 of significant suggestibility.

20 A They might not --

21 Q Just so we're sure --

22 A They might --

23 Q -- you've indicated that is not your opinion; is
24 that correct?

25 A That's not exactly my opinion.

1 Q The decision or the -- the differences between
2 admissibility of a statement, that is, whether
3 they should be considered by a jury, you
4 understand is a function of the Court. That is,
5 the Court gets to decide whether or not a
6 statement is, in fact, admissible?

7 A That's why we're having this hearing. And he will
8 make the decision, yes.

9 Q Well, the decision on admissibility has already
10 been made. Did you know that?

11 A I did. The suppression hearing took place, and there
12 was a motion to have another suppression, and that
13 was denied.

14 Q Okay. So what makes you think that this hearing
15 is about whether this statement is admissible or
16 not?

17 A That was my error. I beg your pardon.

18 Q All right. So you understand now that that's
19 already been decided?

20 A Yes.

21 Q And usually the issues of coercion or
22 suggestibility or improper influence or
23 vulnerability go to the issues of whether a jury
24 should hear the statement in the first instance.
25 That is, it goes to the issues of admissibility,

1 not the weight or the trustworthiness of the
2 statements?

3 ATTORNEY FREMGEN: Judge, I object. I
4 don't think that's necessarily accurate based upon
5 Jury Instruction 180, which deals with the jury's
6 right to decide whether to believe a statement in
7 whole or in part. And how they come about and get
8 to that point I think is up to the jury.

9 THE COURT: I'm going to sustain the
10 objection. Also, that it seems to me there's a
11 foundational objection, too. That was a compound,
12 beyond compound, question. I -- we're talking about
13 coercion and vulnerability and too many things. So
14 the objection's sustained.

15 ATTORNEY KRATZ: All right. I can -- I can
16 certainly, uh, break that into separate components.

17 Q (By Attorney Kratz) The decision of whether a
18 statement is coercive to the point of being
19 unlawfully so is a decision for the Court. You
20 understand that?

21 A Yes.

22 Q And the trustworthiness, or the reliability, or
23 whether a statement ought to be believed, do you
24 agree is a function for the jury to consider?

25 A It's the function of the -- of the judge at the time

1 of a motion to suppress and -- and at the time of a
2 trial it's the decision of the jury.

3 Q All right. Then, I guess, we've come full
4 circle, Doctor, understanding that reliability is
5 a decision for the jury and something that you're
6 not willing to offer an opinion on. And
7 understanding that, uh, admissibility is a
8 decision for the Court, how is it that you
9 believe that you can assist this jury in the
10 consideration of a fact at issue? That is, how
11 are you going to help this jury yourself?

12 A Well, the way it was stated by Mr. Fremgen, when
13 you've talked about reliability, painted it in a very
14 black and white terms, I am here to talk about
15 scientific ways to evaluate a person's psychological
16 vulnerability to respond to leading questions or
17 respond to external pressure.

18 Uh, I am not an expert regarding police
19 interrogation. That would be a Dr. Richard Leo,
20 attorney, social psychologist and -- and
21 sociologist at the University of California in
22 San Francisco. He would be much more in a
23 position to talk about external factors.

24 I'm talk -- I'm here to talk to you, or
25 to the Court, or whoever might want to listen,

1 uh, about what psychological tests, what history,
2 what research, what a person's social history has
3 to do with the likelihood that they will be
4 suggestible.

5 Q I appreciate your answer. The question, though,
6 was how is that going to help the jury? How does
7 that help them decide part of this case? What
8 are you helping them decide?

9 A I would help them decide how much weight to place on
10 Brendan Dassey's confession. Uh, they might decide
11 if I -- they find me an incredible witness, to place
12 a hundred percent weight on his confession. Or, if
13 they think that information I provide is proba -- is
14 probative, not prejudicial, assist them, then they
15 might decide to be more cautious in acc -- totally
16 or partially accepting his testimony. That's their
17 job.

18 Q If allowed to testify in this trial, Doctor, we
19 will undoubtedly go through the Wechsler -- the
20 16, uh, PF and, um, in great extent, the MMPI.
21 But for today, I'm going to limit my questions to
22 the -- the Gudjonsson Suggestibility Scale, um,
23 as that appears to be what you called the, uh --
24 the best measure or best objective test on the
25 issue of suggestibility. You still hold that

1 opinion, I assume?

2 A As long as it's understood that it's one component of

3 a comprehensive, uh, evaluation.

4 Q I do. And -- and I'll concede in -- in your

5 direct examination you talked about IQ and

6 personality characteristics as -- as well. And I

7 think --

8 A Those are very crucial as well.

9 Q And Mr. Gudjonsson, I think, uh, suggests or

10 mandates the same as well. The, um,

11 administration of the, uh, Gudjonsson Scale, the

12 GSS we'll -- we'll call it for, uh -- for short,

13 as I understand, is intended to mimmick, uh, a

14 police interrogation. Is that -- is that fair?

15 A That's barely fair. It's making -- it's a very --

16 simplifying it very much --

17 Q All right.

18 A -- but, uh --

19 Q I'm sure you're going to --

20 A -- so we can facilitate the discussion and have it

21 flow, I'll say, yes.

22 Q Why don't you, uh -- why don't you explain, as

23 best you can, how this particular test is

24 designed to replicate or to mimmick a, uh -- a

25 police interrogation?

1 A I'll be glad to do that. An individual is presented
2 a battery of tests so they don't realize that their
3 suggestibility is being tested at that particular
4 point in time. The test is presented as a memory
5 test, and they're told that I'm going to read you a
6 story. This is paraphrasing. I -- I could pull out
7 the manual and give you the exact instructions,
8 but --

9 Q Would you -- would you mind, terribly, if I
10 interrupted you as -- as -- as we go along? Is
11 there anything about a police interrogation where
12 a -- a subject is told this is a memory test and
13 not -- not an interrogation?

14 A Uh, I don't believe that -- they -- they might be
15 told different things, but I don't think they're told
16 that.

17 Q All right. I -- I'm trying to see the
18 similarities, but -- but maybe you can point
19 to -- to those things that are meant to be --

20 A Well --

21 Q -- similar to an interrogation. I know how the
22 test works. I've seen your direct. You don't
23 need to go through all that --

24 A Okay.

25 Q -- just how is it similar to an interrogation?

1 A It's similar in that a person is told a criminal act
2 that allegedly has taken place, and the outcome, and
3 details, and -- and then they are asked to first
4 report their recollection of what they've been read.

5 Q Let me stop you there. In your direct
6 examination you omitted that part of the results.
7 That is, that is the, um -- the recitation or
8 the, um, uh, the memory part of it. Tell me
9 how -- all you can remember, I think, are -- is
10 probably what Gudjonsson suggests you ask about
11 the story. Uh, how did Brendan do on that part
12 of the test since we never heard about that on
13 direct examination?

14 A I did not score that. I -- I recorded his responses
15 to -- in order to administer the test in a way that
16 was in a standardized administration. But those
17 scores are not used. The reporting is not used to
18 obtain quantifiable information designed to assess
19 for the suggestibility part.

20 Q So the ability to accurately recount, um, the
21 story or specific facts of the story, really
22 isn't something that is scored. At least, it
23 isn't scored on a -- where there's norms or where
24 you're able to -- to assign some percentiles; is
25 that correct?

1 A True.

2 Q Okay. As I understand, then, after, uh, that
3 occurs, the first, um, series of -- Well, I
4 apologize. Let me go back. The -- the kind of
5 memory, and I assume that you know about memory,
6 and -- and how it works, and -- and different
7 kinds of memory, do you know what kind of memory
8 it's called where you, uh, parrot back or, um,
9 recall a story that's been read to you?

10 A Well, one that comes immediately to mind, there may
11 be others, is recall, or short -- very -- short-term
12 memory.

13 Q Have you ever heard of the term "semantic
14 memory?"

15 A No.

16 Q Do you know the differences between semantic
17 memory and autobiographical or event kinds of
18 memory?

19 A No.

20 Q Let me ask you, Dr., uh, Gordon, um, if a person
21 is asked to remember or recall or describe
22 something that's read to them, do they remember
23 that differently than an event which they
24 actually lived through?

25 A Yes.

1 Q Do you know individuals with Brendan's particular
2 intellectual difficulties, whether they are
3 better able -- significantly better able to
4 recall events that they've actually lived through
5 rather than something that's read to them or book
6 kind of learning?

7 A All of us would be able to better remember, unless
8 we're severely traumatized, events that we've been
9 through, uh, but especially a person who, uh, has
10 limited intellectual functioning, then they might be
11 able to better concentrate -- better remember things
12 they experienced in a multi-sensual -- very senses
13 way than if they simply heard something read to them.

14 Q Well, let -- let me just ask you if you're aware
15 of studies that suggest that, especially
16 individuals with intellectual difficulties, that
17 they are much, much better at event kinds of
18 memory? That is, they have higher accuracy, less
19 tendency to acquiesce, uh, than, um, the semantic
20 or this, um, other kind of memory that you've
21 described after hearing a story. Understand my
22 question?

23 A Yes.

24 Q Are you aware of those studies?

25 A I'm not aware of the studies, but, uh, based on my

1 knowledge of the area, that would not surprise me.

2 Q Makes sense?

3 A Sure.

4 Q And, so, the -- the replication or mimicking an

5 interrogation, would you, um, agree that,

6 especially in an individual with intellectual

7 difficulties, um, that they might be expected to,

8 um, recall in more detail, to be more accurate

9 and, in fact, less susceptible to suggestibility

10 with something that they've lived through rather

11 than a story that's read to them?

12 A If you only consider that factor and not their

13 limited intellectual functioning and limited memory,

14 then the answer would be, yes.

15 Q All right. By the way, the, um -- the raw scores

16 and everything that you've, uh, testified to, um,

17 or about here today, uh, had you heard of or did

18 you, um, comply with, the State's demand or

19 request for that raw data with the information?

20 A I was made aware of that request this morning.

21 Q Okay. Is that something you can comply with

22 before trial?

23 A Before trial, but under limited conditions. I've

24 purchased those instruments with written agreements

25 that I would not disseminate those -- that

1 information to anyone other than psychologists or to
2 psychiatrists for the Gudjonsson Inventory that don't
3 have the training in the eyes of the publisher or the
4 developer to have an adequate understanding of the
5 ways to interpret those results. And so I could
6 not -- I would be violating what I signed and
7 violating my ethics as a psychologist to reveal the
8 raw data to you.

9 If, on the other hand, and this is how
10 I've handled this before and on many occasions,
11 if you had a psychologist retained by you, I
12 could send that psychologist my entire file
13 without exception.

14 Q That information is just inappropriate or too
15 dangerous in my hands? Is that what you're --
16 what you're saying?

17 A I don't like to say too dangerous. It just might be
18 misused -- misunderstood. Not -- not doubt -- due to
19 any, uh, intention on your part.

20 Q I -- I would ask you questions based upon your
21 raw data. You understand that; right?

22 A I understand.

23 Q I would ask you questions based upon the notes
24 that you took. You understand that?

25 A You can -- Let me clarify. My notes are -- are yours

1 to have.

2 Q All right.

3 A But I'm talking about the test reports. I mean,
4 excuse me. The test answer sheets. The test
5 questions. That is what I cannot share with you. I
6 can share everything else with you, but not that.

7 Q That brings me to another, uh -- another
8 question. Did you, um, videotape the
9 administration of the Gudjonsson Suggestibility
10 Scale?

11 A No.

12 Q Can you tell us why?

13 A Well, I've testified probably -- I don't know. You
14 can -- Please don't impeach me if I get the wrong
15 number from any direct. I've probably testified a
16 thousand times or so, and -- and I've done thousands
17 of evaluations of different sorts. And it's not
18 common practice at all to videotape those
19 evaluations.

20 And, actually, it would be a deviation
21 from standardized practice to do so. And I
22 operate according to a certain protocol and --
23 and try to -- my best to have an objective
24 evaluation that is fair, straight forward,
25 honest, and the results are based on objective

1 ways of conducting the evaluation.

2 Am I distorted if that recording was --
3 I've -- if it was going? I've had attorneys ask
4 to sit in. I say, if you need to sit in, then I
5 won't do the evaluation. I can respect your need
6 to do that, but that's not how it's done.

7 Q In this case, you got a chance to watch the
8 investigators ask, um, coercive or interrogation
9 kind of questions; isn't that right?

10 A I had a chance to --

11 Q That's -- I'm sorry. Go ahead.

12 A I had a chance to watch them interrogate, uh, Brendan
13 Dassey.

14 Q Right.

15 A It's -- whether they were coercive, uh, depends on
16 the particular question.

17 Q You understand that the reasons, at least in
18 Wisconsin, that, um, courts and, in fact, the
19 legislature has mandated or required police
20 officers to videotape those kinds of, uh,
21 interrogations and so it removes any question
22 about, uh, how those questions might have been
23 asked or, uh, um, what influences might have been
24 placed upon the -- the subject of that. You
25 understand that?

1 ATTORNEY FREMGEN: Judge, I'd object to
2 that question. I don't know if there's been any
3 foundation that this witness knows that that's
4 the law in Wisconsin and whether this witness is
5 aware of the **Young** case. And I'm not even sure
6 it's necessarily relevant for the purposes of
7 this issue about the admissibility or the offer
8 of proof to allow for this person to testify at
9 trial.

10 THE COURT: I'm going to sustain the
11 objection. There -- there really hasn't been a
12 foundation laid for it. I do have some relevance
13 concerns. If you want to try to lay a foundation
14 and ask if -- Okay.

15 ATTORNEY KRATZ: I can certainly wait for
16 trial to -- to do that, Judge.

17 Q (By Attorney Kratz) I think, uh, uh, you expect
18 us to believe you as to what the answers were.
19 That's the bottom line; isn't it?

20 A Your job is to question me. Uh, my job is to try to,
21 uh, be as objective, as fair as possible. But
22 whether you believe me, that -- Your job is not to
23 believe me. Your job is to question me. Your job is
24 to cross-examine me.

25 Q You'd like this Court to believe that those were

1 the answers that Brendan gave; is that right?

2 A My --

3 Q Without the benefit of -- of either -- either the

4 raw results or a videotape or something else?

5 A My hope is that my testimony would help the trier of

6 fact make appropriate decisions and -- and render

7 justice in this case.

8 Q Okay. Let's go to the second part of the GSS

9 where the subject is provided with, uh, many

10 times, leading questions. In fact, most of the

11 25 questions, as I understand, are leading

12 questions; is that true?

13 A That's not true. There are 20 questions total.

14 Q Twenty. You said 25 in the direct. I'm sorry.

15 There's 20 total?

16 A All right. I beg your pardon. Well, there are 20

17 total. My error.

18 Q Okay. And of the 20 questions, most of them are

19 leading; is that right?

20 A Three-fourths, yes.

21 Q And they're meant to gauge whether or not a

22 subject is willing to acquiesce or to yield to a

23 particular alternative or to a particular

24 question; is that true?

25 A Yes. They measure the extent which an individual

1 yields to leading questions.

2 Q Importantly, Doctor, in -- within this test, um,
3 some of -- and perhaps you can correct me -- most
4 of the questions that are presented are, uh, what
5 are called, uh, false alternative leading
6 questions; is that true?

7 A I believe -- There are false alternative leading
8 questions, but they're not the majority. I -- I
9 could come up with a number, if you'd like.

10 Q Well, no, if we -- We're going to probably get a
11 more detailed summary at some point. But this
12 methodology mandates that the questions don't
13 really have a true answer. In other words, it's
14 a question like, did the lady have a red hat or a
15 blue hat when she may not have had a hat at all.
16 Isn't that fair?

17 A That's fair. That's one type of question on there,
18 that's true.

19 Q All right. How -- how is this test, then,
20 similar, or that part of the test, how is it
21 similar or how does it replicate or how does it
22 mimmick a police interrogation?

23 A It would mimmick a police interrogation if a -- if
24 leading questions were asked.

25 Q Leading false questions; right?

1 A Leading --

2 Q Leading false alternative questions.

3 A Leading false questions or leading true questions or

4 leading false alternative questions.

5 Q Really. So, if a subject answers correctly when

6 a true answer is provided, do they get a point

7 for yielding?

8 A I want to make sure I have the -- your question.

9 Q If a leading question is provided to a subject in

10 the GSS, and if one of the answers is a correct

11 or a true answer, and the individual correctly

12 answers that leading question, are they provided

13 a point for yielding?

14 A That wouldn't be a leading question if they're asked

15 an accurate question.

16 Q Really?

17 A There are 5 of 20 questions that are not yielding.

18 Q That are not leading?

19 A I mean not leading.

20 Q If I ask you, um, my shirt's blue, isn't it?

21 That's a leading question, isn't it?

22 A It is.

23 Q And it contains a true statement. In other

24 words, if you answered, yes, you'd be answering

25 my leading question; isn't that --

1 A True.

2 Q -- true?

3 A True.

4 Q If Brendan, or anybody else who takes this test,
5 answers a leading question that has the correct
6 answer in it truthfully or correctly, do they get
7 a point for yielding?

8 A No.

9 Q When a police officer, then, asks an individual,
10 asks a suspect, whether or not they did a certain
11 act or whether or not they, um, involved
12 themselves in a crime, even if it was in a
13 leading way, how does that then replicate or
14 mimick the GSS?

15 A It would be similar to your blue shirt, and they
16 would not get a point. It would not -- it would be
17 not leading, according to Gudjonsson's definition,
18 but I could see why you're calling it leading. And
19 they would not get a point on the Gudjonsson test and
20 they would not, uh, be seen as trying to influence
21 the subject.

22 Q Which brings me to my point, then. The import of
23 the Gudjonsson leading questions are that they
24 contain false answers or false alternatives.
25 That's true; isn't it?

1 A That's true.

2 Q All right. And, so, the assumption that has to
3 be made, at least the assumption if this is to be
4 given any validity, is that the police officers
5 in an interrogation that this was meant to
6 mimmick, also have to have provided false
7 alternatives or false suggestions; isn't that
8 true?

9 A That's why when you said, does it mimmick, I said
10 that's simplifying it. So, um, that's true. I mean,
11 what you said is true. It -- it -- it -- it
12 doesn't -- it's not -- doesn't totally mimmick a
13 police interrogation.

14 Q By the way -- I -- I'm jumping ahead, but -- but
15 I'm doing it for a point. The, um, results or
16 the opinions that are able to be drawn from the
17 GSS scores include whether an individual is
18 vulnerable to making a false confession; is that
19 true?

20 A That's true.

21 Q Okay. Doctor, are you aware of any problems with
22 the, um -- the methodology of suggesting the very
23 result within a question and then that leading to
24 an ultimate conclusion? Do you understand my
25 question?

1 A It's confirmatory bias.

2 Q Right. And, in fact, the GSS, you're providing a
3 subject with a false statement that, if they
4 adopt, you're then able to opine that the person
5 is vulnerable to making false statements or false
6 confessions; isn't that true?

7 A Compared to the norms on which the test is based,
8 yes.

9 Q And are you aware of whether the GSS has been
10 criticized for that very methodology?

11 A No.

12 Q The next part of the test that -- again, correct
13 me if I'm wrong -- is meant to mimick or
14 replicate an interrogation is use of mild
15 coercion. In fact, it's a, uh, statement of
16 disappointment or a statement of, um,
17 condemnation as to previous answers that were
18 given; is that true?

19 A Everything but the word "condemnation." I think that
20 might too strong.

21 Q All right. Something akin to folding your arms,
22 telling Brendan, or whoever the subject is, that
23 I'm disappointed in your answers, I think you can
24 do better, um, and suggest that they try harder
25 this time, and then they're asked the same series

1 of questions. Is that basically it?

2 A You're -- you're -- Yes, you've made a number of
3 errors. It is, therefore, necessary to go through
4 the questions once more, and this time try -- have
5 you try more accurate -- to be more accurate. So
6 it's -- it's not as harsh as -- as you state. But
7 it -- but it does, nonetheless, uh, express the
8 belief that they could do better the next time.

9 Q All right. And this, um, series of observations
10 that you make, then, if, in fact, the subject
11 follows your suggestion and then changes their
12 answer, which is really what it is, is then
13 counted as what's called a shift; is that right?

14 A True.

15 Q This shift norm, or the normal score, or the
16 score of that population which was administered
17 this test, as I understand, is two or something
18 just above two; is that right?

19 A That is correct for adult populations. And Brendan
20 is being -- he's still a adolescent, but he's --
21 we're talking about adult court, so it could --
22 different norms could be used -- could be debated
23 that adolescent norms might be more appropriate.

24 Q And that population against which Brendan was
25 compared, that norm, if you would, do you know,

1 um, what the backgrounds of those individuals
2 were or generally what kind of, um, people were
3 used to establish these norms?

4 A Yes.

5 Q Were any of them incarcerated for first degree
6 murder? In other words, was this test
7 administered to anybody while in jail for first
8 degree intentional homicide?

9 A I don't know. I'd have to check the manual.

10 Q Let me ask you, Dr., uh, Gordon, before
11 administering this test to Brendan, did you tell
12 him that you were working on his behalf? That
13 is, that you were a defense expert?

14 A No.

15 Q Did he know who you were before you sat down and
16 spoke with him?

17 A Yes.

18 Q How did he know that?

19 A Oh, did he know in advance?

20 Q Yes.

21 A I don't know. Sometime -- In this particular case.
22 Sometimes attorneys tell their client that I'll be
23 coming and sometimes they don't tell them. Or maybe
24 even -- even if they're told, they don't remember.
25 So, I don't know.

1 Q I -- I guess what I'm getting at is, how did you
2 introduce yourself and how did Brendan know why
3 you were there to speak with him that day?

4 A I told him that I was there at the request of his
5 attorney to do a psychological evaluation, that --
6 and with -- without specific regard to suggestibility
7 was not mentioned.

8 Q I understand that. My point is, you had
9 identified yourself with being aligned with the
10 defense team? There on behalf of his defense
11 attorney?

12 A No. If you'd let me finish, I -- I could clarify
13 that.

14 ATTORNEY FREMGEN: Judge, I'd object
15 anyways. I don't know if it's, again, relevant for
16 purposes of today's hearing to determine the
17 admissibility or the use of an expert at test -- to
18 testify in -- in this particular area. I understand
19 that it might go to weight and how the weight would
20 be, uh -- how the testimony would be considered by
21 the trier of fact. But that's not the issue. The
22 issue is whether the trier of fact should even be
23 allowed to hear that. Weigh this up to the trier of
24 fact. We should leave that up to them.

25 THE COURT: Yeah. I -- I'll overrule that

1 objection. I think this -- this threshold question
2 can be asked. Beyond this, no. Go ahead, you may
3 answer if you remember the question.

4 THE WITNESS: I don't, Your Honor. I'm
5 sorry.

6 THE COURT: Can you reask that,
7 Mr. Kratz --

8 ATTORNEY KRATZ: Sure.

9 THE COURT: -- please?

10 Q (By Attorney Kratz) I think you were, um,
11 explaining how you identified yourself and why it
12 was that you were there to see Brendan.

13 A I explained my purpose of being there with Brendan as
14 no different than I do any other time. I explain who
15 requested that I do the evaluation. That I'm there
16 to do an evaluation. Sometimes, if it's for fitness
17 or some specific reason, then I might tell them, but
18 in regards to suggestibility, that I don't tell them
19 specifically.

20 I tell them that I'm going to do an
21 overall evaluation at the request of their
22 attorney. That they don't have to answer
23 questions if they don't choose to. That I do a
24 fair and objective evaluation to the best of my
25 ability. I cannot guarantee the results. If the

1 results are not pleasing or consistent with their
2 case in the eyes of their attorney, they don't
3 have to be used.

4 And I then talk to them to try to see if
5 they understand my explanation. If they don't,
6 then I try to explain some more. I tell them
7 that I'm -- might be retained by their attorney.
8 I might be paid by their attorney. But I'm there
9 to do an objective, fair, straight forward
10 assessment. And my assessment might be a waste
11 of their money.

12 Q All right. As I understand it, the subject who's
13 the -- or the subject of the -- of the test
14 changes their answer, they're given a -- a point,
15 if you will, for a shift for -- for changing that
16 answer; is that right?

17 A True.

18 Q What if they change their answer to what would
19 otherwise be the correct answer? That is, uh, if
20 they, uh, said, uh, at first that the lady had a
21 red hat on, and then later, as I gave in my
22 previous example, tells you the lady didn't have
23 any hat on, does he still get a -- a point for
24 shifting?

25 A In -- regardless if he shifts from correct to false

1 or false to correct, he gets the point for shifting.

2 Q All right. Now, in real life, which is really
3 why we're here, what is that trying to mimick?
4 In other words, shifting from an incorrect answer
5 and then giving a correct answer? Why would that
6 be considered something of a negative or sug --
7 going to suggestibility or, uh, getting a shift
8 score?

9 A Because I'm not here to evaluate whether a person's
10 telling the truth or not. I'm evaluating whether
11 they were susceptible to suggestibility. That is
12 also measured by yielding and shifting their
13 responses.

14 Q In the real world, if a subject of a
15 interrogation -- of an interrogation -- denies a
16 fact or denies an involvement, and let's assume
17 for this question that, um -- that they did that,
18 that that's a true thing that they've been asked
19 about, and they said, no, I didn't do that,
20 officer asks them again or maybe even, um,
21 provides them with some, um, evidence that they
22 were involved in that, and the person shifts to
23 the correct answer or admits that they did it,
24 would that be an example, at least with the GSS,
25 of being a shift?

1 A It would.

2 Q Being suggestible?

3 A It could. It depends on, also, whether the

4 information supplied by the police officer to the

5 individual is -- is accurate and -- and is known.

6 Q Right. I've -- I've asked you to assume that.

7 But that would still be a shift; wouldn't it --

8 A It would.

9 Q -- in the GSS?

10 A It would. Sorry.

11 Q All right. So, the ability to measure somebody's

12 vulnerability to suggestibility, at least by this

13 instrument, is not, um, any comment upon the, uh,

14 truthfulness or, um, falsehood of that statement;

15 is that correct?

16 A That's true.

17 Q We've come full circle again. How, then, does

18 this instrument allow you or anybody else to

19 indicate that a person is more vulnerable to

20 giving a false confession rather than any kind of

21 confession?

22 A They're more vulnerable to giving a confession,

23 including a false confession. Also, a true

24 confession, if they have increased scores on the

25 Gudjonsson. Your point's well taken.

1 THE COURT: Any additional questions,
2 Counsel?

3 ATTORNEY KRATZ: Just -- just one, uh --
4 one area, Judge.

5 Q (By Attorney Kratz) Uh, Dr. Gordon, um, your
6 experience with the administration of the GSS,
7 uh, does it include individuals, or has it ever
8 included individuals, who have been charged with
9 first degree intentional homicide?

10 A No.

11 ATTORNEY KRATZ: For purposes, then,
12 Judge, of the offer of proof and, um, for
13 purposes that, uh, we will be including in our
14 memorandum of law to the Court, that's all the
15 questions I have of this doctor. Thank you.

16 THE COURT: All right.

17 ATTORNEY FREMGEN: Judge, I'd like to
18 redirect on a few, if the Court will allow me.

19 THE COURT: We had the DVD of
20 approximately three hours plus. All right.
21 Limited amount of redirect.

22 ATTORNEY FREMGEN: Just limited. I'll
23 limit to six questions, Judge.

24 THE COURT: I'm going to hold you to that.

25 ATTORNEY FREMGEN: That's fine. I accept

1 that.

2 **REDIRECT EXAMINATION**

3 BY ATTORNEY FREMGEN:

4 Q Doctor, you were asked a number of questions
5 about the Gudjonsson Scale of Suggestibility;
6 correct?

7 A Correct.

8 Q Is that the only tool that you would employ in
9 order to get an accurate assessment of a subject
10 for purposes of suggestibility?

11 A Absolutely not.

12 Q The other tests, themselves, that you conducted,
13 were those conducted in -- in -- in an effort to
14 obtain a more comprehensive assessment?

15 A Yes.

16 Q And is there a purpose to take -- to, uh -- to,
17 uh, conducting more than one test in order to,
18 uh, assess a person's vulnerability to
19 suggestion?

20 A Yes.

21 Q What -- what is that purpose?

22 A Well, the different tests that I administered measure
23 different psychological factors in terms of a
24 person's intellectual and emotional functioning.
25 And, so, if I just relied on one test, then I might

1 not be measuring their intellectual functioning, or
2 if I just focused on a couple of tests, I might just
3 focus on their intellectual functioning and not their
4 personality characteristics or their suggestibility
5 on a suggestibility scale.

6 Q So, hypothetically, if one were, um -- had scores
7 that were high scores on GSS, but yet had, um,
8 test results that indicated that they are
9 socially ept and have high IQ, maybe high --

10 A So --

11 Q -- functioning, would -- would that, then, lead
12 you to a different conclusion using the GSS?

13 A It very well would lead me to a different conclusion.
14 That's hard to -- that's a hypothetical. I -- I
15 would still need to consider the entire evaluation.

16 I can tell you there's a correlation
17 between the GSS, the personality scores that --
18 the personality scores from tests I used, as well
19 as IQ scores, as well as criminal behavior, as
20 well as age, etc. So there's a correlation, but
21 it doesn't -- the correlation, again, like I said
22 on direct to Mr. Kratz, is not one-to-one. So
23 there -- there could be exceptions to that rule.

24 THE WITNESS: That's a long answer. I'm
25 sorry, Judge.

1 Q (By Attorney Fremgen) My last question, then, to
2 kind of wrap this up. So, essentially you're
3 attempting to obtain, uh, sufficient data to
4 assess all of the psychological factors in the
5 psychological environment that affects a
6 subject's potential vulnerability to suggest --
7 to suggestibility?

8 A Within a limited amount of time and limited
9 resources, I mean, uh -- Yes.

10 ATTORNEY FREMGEN: Okay. Thank you, very
11 much.

12 THE COURT: All right. Uh, you may step
13 down.

14 THE WITNESS: Thank you, Your Honor.

15 ATTORNEY KRATZ: Before Dr., uh, Gordon
16 leaves, Judge, I am going to renew my demand for
17 Dr. Gordon's file despite, uh, Dr. Gordon's, uh,
18 apprehension regarding release of that
19 information.

20 THE COURT: You may step down.

21 ATTORNEY KRATZ: Um, if, uh, in fact,
22 the Court does allow Dr. Gordon to testify, the
23 State certainly is entitled to, uh, discovery,
24 which includes the file, those raw materials,
25 notes, and whatever other information may be

1 contained in that file. I appreciate
2 Dr. Gordon's (inaudible) assure that I will be
3 sharing it with somebody other than myself.
4 Again, this is only if the Court allows that, and
5 perhaps the Court can issue a ruling at a later
6 time. But, uh, at the very least would ask the
7 Court order Dr., uh, Gordon not to destroy or,
8 um, uh, discard anything that may currently be in
9 his file so that, if, in fact, the Court, uh,
10 provides a favorable ruling to the State, uh, at
11 some point, we are able to get all that raw
12 material.

13 THE COURT: The Court will so order.
14 Dr. Gordon, you heard that, did you not? You are
15 not to destroy any of the notes or materials that
16 comprise this file. By this file, I mean the
17 file -- the complete file on the, uh, interview and
18 testing of this defendant.

19 THE WITNESS: I would never do that,
20 Your Honor, in any case, unless it was over seven
21 years old or whatever the statutory requirements
22 permits.

23 THE COURT: All right. Um, the Court has
24 scheduled April 5 at 9:00 a.m. as a time to hear the
25 remaining motions. Uh, the -- counsel are aware

1 that they have until April 2, to -- if they intend
2 to have briefs -- brief their positions -- get that
3 brief into the Court. Uh, I ask each of them to
4 prepare a proposed order reflecting their position
5 based on the testimony here, as well as the DVDs,
6 and the, uh -- the applicable case law.

7 Uh, at that time the Court -- on
8 April 5, the Court, in considering the other
9 motions, will announce a decision on this one as
10 well. Anything else, gentlemen?

11 ATTORNEY KRATZ: Not for today. Thank you,
12 Judge.

13 THE COURT: All right. Can I see you --
14 Oop.

15 THE CLERK: Exhibits 1 and 2. Do you have
16 those?

17 THE COURT: I do.

18 THE CLERK: Are -- are they received, then?

19 THE COURT: They are received. Uh, with
20 the -- with the caveat, Exhibit 2, the second
21 DVD, appears not to work all the way through.
22 Uh, I trust Counsel has no objection to me
23 substituting a workable one?

24 ATTORNEY FREMGEN: That's fine. If, uh,
25 Mr. Kratz has no objection, I'll send you my

1 second --

2 THE COURT: All right.

3 ATTORNEY FREMGEN: Mr. Edelstein has a copy
4 already.

5 THE COURT: Very good. Uh, see counsel in
6 chambers for a brief meeting?

7 ATTORNEY KRATZ: Thank you, Judge.

8 ATTORNEY FREMGEN: Thanks.

9 THE COURT: We're adjourned.

10 (PROCEEDINGS CONCLUDED.)

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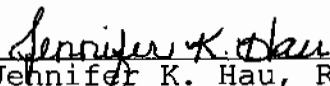
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1 STATE OF WISCONSIN)
) SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 3rd day of April, 2007.
16
17

18 
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
22
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

MOTION HEARING

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 5, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
District Attorney
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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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

1 THE COURT: This is the matter of the State
2 of Wisconsin vs. Brendan R. Dassey, 06 CF 88.
3 Appearances, please.

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney, Ken Kratz,
6 Assistant Attorney General, Tom Fallon, Assistant
7 D.A., Norm Gahn, all appearing as special
8 prosecutors.

9 ATTORNEY FREMGEN: Attorney Mark
10 Fremgen, Attorney Raymond Edelstein appear on
11 behalf and with Brendan Dassey.

12 THE COURT: All right. Today we're here
13 for a number of matters. Among them is a decision
14 on a request by the defense to, uh, have expert
15 testimony from a so-called false confession expert.

16 Uh, we have a number of motions that the
17 Court is going to consider today. Motions filed
18 both by the defense and by the prosecution. And
19 it's my understanding, gentlemen, just as a -- a
20 preliminary matter -- excuse me -- that you've
21 entered into a number of stipulations that will
22 be placed upon the record be -- before the -- the
23 end of court today; is that correct?

24 ATTORNEY KRATZ: Judge, uh, we do have, uh,
25 the completed, uh, stipulations. There are, uh, 21

1 stipulations that have been entered into. This is a
2 document that is signed by myself and, uh,
3 Mr. Fremgen, both as lead counsel, and also by, uh,
4 Mr. Dassey. I would just ask the Court just take a
5 very brief moment to, uh, enter into a colloquy with
6 Mr. Dassey to ensure that, uh, these decisions, that
7 is, the decisions to agree to, uh, these facts and,
8 uh, admissibility of evidence as set forth in this
9 document, does, in fact, bear his signature and is a
10 free and voluntary choice.

11 THE COURT: All right. Mr. Dassey, you've
12 heard Mr. Kratz; haven't you?

13 THE DEFENDANT: Yeah.

14 THE COURT: Could you move the microphone
15 over there, please, Mr. Edelstein?

16 THE DEFENDANT: Yes.

17 THE COURT: And did you understand him?

18 THE DEFENDANT: Yes.

19 THE COURT: Uh, have you had a chance to
20 go through this document? I'm -- I'm holding
21 something up called "trial stipulation." Your
22 counsel's showing you a copy of it.

23 THE DEFENDANT: Yeah.

24 THE COURT: And did you and your lawyers go
25 through it and were they read to you or did you read

1 them?

2 THE DEFENDANT: They read it to me.

3 THE COURT: Did they? And you understood

4 them?

5 THE DEFENDANT: Yeah.

6 THE COURT: You understood these to be

7 agreements that your counsel and the prosecution and

8 you were entering into?

9 THE DEFENDANT: Yeah.

10 THE COURT: And that these agreements

11 would, in some senses, uh, permit the, uh, admission

12 of certain facts without underlying testimony?

13 THE DEFENDANT: Yes.

14 THE COURT: And you agree to that?

15 THE DEFENDANT: Yeah.

16 THE COURT: You understand you didn't have

17 to agree to that?

18 THE DEFENDANT: No.

19 THE COURT: You understand that?

20 THE DEFENDANT: Yeah.

21 THE COURT: All right. And this is your

22 signature? And I'm -- you maybe can't see it from

23 here, but is that your signature on the final page?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Anything else on

1 that?

2 ATTORNEY KRATZ: Not on the stipulation,
3 Judge. Thank you.

4 THE COURT: From -- from defense?

5 ATTORNEY FREMGEN: I would just, for the
6 record, Judge, I did read the stipulations to
7 Mr. Dassey. He did not read them himself.

8 THE COURT: Correct.

9 ATTORNEY FREMGEN: Um, he also -- when he
10 signed the stipulations, we discussed why we're
11 doing this, and I explained it would basically
12 streamline the trial somewhat, eliminate witnesses
13 that weren't necessarily that significant for either
14 the defense or, for the most part, for the State,
15 and I believe he understands that as well.

16 THE COURT: Uh, is it your belief that he
17 freely and voluntarily signed that, uh, set of
18 stipulations?

19 ATTORNEY FREMGEN: I believe so.

20 THE COURT: And that was after you had
21 read the matter to him and explained it; is that
22 correct?

23 ATTORNEY FREMGEN: Correct.

24 THE COURT: All right. Uh, the first
25 matter I'd like to take up today is the offer of

1 proof made by the defense. Uh, the defense is
2 seeking to have admitted testimony from Dr. Robert
3 Gordon on the suggestibility of witnesses that could
4 or may or, uh, might lead to what he terms a false
5 confession.

6 Uh, the Court has reviewed the DVDs that
7 the defense had supplied, uh, providing, in
8 effect, a -- a direct examination of Dr. Gordon
9 on his background, on his education, on his
10 professional qualifications.

11 Uh, additionally, uh, Special Prosecutor
12 Kratz had an opportunity to cross-examine, uh,
13 Dr. Gordon last week at a -- at a hearing in this
14 courtroom. Uh, and the Court has reviewed its
15 notes on that cross-examination as well.

16 I've had an opportunity to read, uh,
17 briefs submitted by both parties. I read a
18 number of cases. Uh, Wisconsin has yet to have a
19 published case -- or I should say a reported
20 case -- on whether or not false confessions or
21 suggestibility in the context of false
22 confessions are admissible in -- in court at
23 trial.

24 Um, defense has provided me with some
25 information. I found some, as well, myself on

1 cases in other jurisdictions. State has provided
2 information on cases in which this kind of
3 testimony was not permitted. Uh, I think there's
4 a -- a -- an article at 82 ALR 5th, concerning
5 expert testimony on the reliability of -- of, uh,
6 confessions. I've had a chance to review that.

7 Uh, based on my review, based on, uh, my
8 opportunity to take a look at, uh, uh, the
9 testimony of Dr. Gordon, uh, this is what my
10 ruling is:

11 On February 27, 2006 and March 1, 2006,
12 Brendan Dassey was interviewed by police
13 authorities concerning the disappearance and
14 murder of Teresa Halbach. The statements he made
15 during those interviews were the subject of the
16 suppression hearing for -- before this Court on
17 May 4, 2006.

18 On May of 12, 2006, the Court announced
19 that, based on the totality of the circumstances,
20 it found Mr. Dassey's statements to be voluntary
21 and, thus, admissible in the trial of this
22 matter.

23 Subsequent to this -- to that ruling,
24 Mr. Dassey apparently gave an additional
25 statement to the police. I say, "apparently,"

1 because I have not yet seen, read or ruled on the
2 admissibility of that statement.

3 On June 30, 2006, uh, the Court received
4 an undated letter, purportedly from Mr. Dassey,
5 retracting any admissions he made in his prior
6 statements, which conceded his involvement in the
7 crimes with which he had been charged.

8 The defendant has retained, as an expert
9 witness, a clinical psychologist, Dr. Robert
10 Gordon, who is prepared to offer -- offer
11 testimony on the defendant's behalf on the
12 subject of suggestibility or, more appropriately,
13 witness suggestibility as it relates to false
14 confessions.

15 To that end, his counsel have brought a
16 motion seeking to permit Dr. Gordon to testify at
17 trial. As an offer of proof, Mr. Dassey's
18 counsel have submitted DVDs, to the Court and the
19 special prosecutor, of Dr. Gordon testifying on
20 direct examination and discussing his
21 credentials, his interviews of Brendan Dassey and
22 the battery of tests given to him and the
23 scientific basis for the theory of suggestibility
24 about which he wishes to testify.

25 Additionally, the defense has submitted

1 a five-page written report by Dr. Gordon of his
2 findings. At a hearing on March 26, 2007, the
3 special prosecutor had an opportunity to
4 cross-examine Dr. Gordon.

5 Since then, the parties have each
6 submitted briefs on their respective positions.
7 Under Wisconsin law, expert testimony is
8 generally admissible if it is relevant, the
9 testimony will assist the trier of fact, in this
10 case the jury, the expert witness is qualified to
11 provide the scientific, technical or other
12 specialized knowledge, and the expert's testimony
13 is not superfluous or a waste of time. **State v.**
14 **Walstad**, 119 Wis. 2d 483 at 515 and 516.

15 Even if the proposed testimony could not
16 cross the evidentiary threshold of **Walstad** in the
17 Wisconsin Rules of Evidence, it may qualify as
18 admissible if the Court find its -- if the Court
19 finds its exclusion would impermissibly infringe
20 on the defendant's right to present a defense. A
21 right guaranteed under the Sixth Amendment of the
22 United States Constitution and Article 1 Section
23 7 of the Wisconsin Constitution. **State v.**
24 **St. George**, 252 Wis. 2d 499.

25 To be admitted under what I'll call the

1 Doctrine of Constitutional Necessity, the
2 defendant must show the testimony met the
3 statutory standard governing expert testimony.
4 Uh, and this is from Section 9-0-7-0-2 of the
5 Wisconsin Statutes.

6 The testimony is clearly relevant to a
7 material issue in the case.

8 The testimony is necessary to the
9 defendant's case.

10 Its probative value outweighs any
11 prejudicial effect.

12 If these four factors are satisfied, the
13 evidence can be admitted so long as the
14 defendant's right to present the evidence is not
15 outweighed by a compelling state interest.

16 Let me apply what I believe to be the
17 appropriate test.

18 First, is the prop -- is the proposed
19 witness possessed of specialized knowledge, skill
20 or expertise?

21 Uh, Robert Gordon has a Ph.D. in
22 clinical psychology from Washington University,
23 St. Louis. He has been licensed as a clinical
24 psychologist in Wisconsin since 1977, and, I
25 believe, in Illinois since 1980 or '82.

1 His Curriculum Vitae lists ten
2 publications in which he has an authorship
3 interest. He has lectured or spoken on a large
4 number of occasions on psychology or psychology
5 and the law-related subjects.

6 Currently, the majority of his practice
7 is as a consulting and forentincs -- forensic
8 psychologist.

9 He says he has testified in 750 to a
10 thousand legal cases, but admits to recalling
11 only one case in which he gave in-court testimony
12 on witness suggestibility in making a confession.

13 In his clinical and forensic practice,
14 Dr. Gordon has made extensive use of the battery
15 of tests which he administered to the defendant;
16 The Kaufman Brief Intelligence Test, the MMPI, I
17 think, uh, Edition 2, the 16 PF, and the
18 straight -- or the State-Trait Anger Expression
19 Inventory, among the tests.

20 He also gave the defendant tests known
21 as the Gudjonsson Suggestibility Scales, which
22 are designed to evaluate a subject's propensity
23 to yield or shift answers when confronted with
24 negative feedback or interpersonal pressure.

25 From the results of these types of

1 intelligence tests, these types of personality
2 trait tests, and the Gudjonsson Suggestibility
3 Scales, as well as interviews with a test
4 subject, a trained examiner can opine on how
5 susceptible a subject would be to suggestible in
6 a police interview.

7 Based on his education, his clinical
8 evaluative and forensic experience, this Court
9 believes Dr. Gordon, a clinical psychologist, has
10 sufficient expertise to offer opinions on how
11 suggestible Brendan Dassey would be when
12 subjected to a police interrogation.

13 The Court understands Dr. Gordon has
14 limited experience in providing this testimony at
15 trial. That fact goes to the weight the jury
16 affords the testimony, not its admissibility.

17 Secondly, is the testimony relevant?

18 Section 9-0-4-0-1 of the Wisconsin
19 Statutes defines -- defines relevant evidence as
20 evidence having any tendency to make the
21 existence of any fact that is of consequence to
22 the determination of the action more probable or
23 less probable than it would be without the
24 evidence.

25 As an expert in clinical psychology,

1 Dr. Gordon is qualified to interpret the test
2 scores, assess the personality traits of the
3 defendant as real -- uh, as revealed in his
4 interviews, and offer an opinion as to how the
5 defendant would react in a police interview.

6 The issue is the defendant's statement
7 to the police or statements to the police.
8 Dr. Gordon's testimony will, presumably, give a
9 profile of the defendant who, because of his age,
10 lower cognitive functioning and personality
11 traits, presents as a person more likely to be
12 suggestible during police questioning.

13 I believe that this proposed testimony
14 is directly relevant to the material issue of the
15 statements given to the police in this case.

16 Third, will the testimony assist the
17 trier of fact?

18 Dr. Gordon's testimony would be helpful
19 to the jury by showing that an individual with a
20 certain psychological profile may be more
21 susceptible than other members of the population
22 in making a false confession.

23 Will also allow the jury to see that
24 false confessions can occur, and the testimony
25 will aid them in deciding whether the facts of

1 this case fall wholly or partially within the
2 category of a false confession.

3 Ultimately, this Court believes that
4 Dr. Gordon's testimony could assist the jury in
5 evaluating the evidence.

6 Fourth, is the testimony superfluous or
7 a waste of time?

8 Court believes that the testimony to be
9 neither superfluous nor a waste of time. In
10 fact, the testimony goes to the heart of the
11 theory of the defense. That is, that the
12 defendant gave, in whole or material part, a
13 false confession because he was vulnerable to
14 police suggestion because of his age, limited
15 cognitive functioning and certain personality
16 traits.

17 In short, uh, the Court finds that the
18 testimony of Dr. Robert Gordon meets the
19 applicable Wisconsin standards set forth in
20 **Walstad**. Specifically, that he qualified as an
21 expert who possesses specialized knowledge that
22 is relevant because it will assist the trier of
23 fact to understand the evidence and determine a
24 fact in issue. Accordingly, his testimony is
25 admissible.

1 Because I do find the testimony
2 admissible under the relevancy test, I need not
3 consider whether the constitutional right to
4 pres -- prevent -- or present a defense here is
5 implicated.

6 One further word. Dr. Gordon will not
7 and cannot offer an opinion on whether the
8 defendant's statement or statements or any part
9 of them are true or false. That is the sole
10 province of the jury. It, alone, will make that
11 determination.

12 Also, as he noted in his direct
13 examination testimony, Dr. Gordon is not a social
14 scientist, and, therefore, is not an expert on
15 police interrogation techniques or coercive
16 questioning. On those matters he cannot offer
17 expert opinions. Therefore, he will not be
18 permitted to offer any expert opinions on whether
19 or not he believes the questioning of the
20 defendant was coercive.

21 The Court notes, as it did at the
22 beginning of this decision, that on May 12, 2006,
23 it decided that the defendant's statements given
24 to police on February 27, 2006 and March 1, 2006,
25 were as measured by the totality of the

1 circumstances, voluntary admissions.

2 Involuntary admissions are, by
3 definition, the product of, quote, coercive or
4 improper police conduct, end quote. This is
5 **State vs. Hoppe**, 261 Wis. 2d 294 at page 309.

6 Since the Court has already made the
7 finding of voluntariness, Dr. Gordon is not
8 allowed to refer to statements made by the
9 defendant as coerced.

10 Lastly, as part of this order,
11 Dr. Gordon, or his counsel, shall turn over to
12 the special prosecutor as soon as practicable,
13 and in no event later than April 10, 2007, all
14 materials he relied on, including, but not
15 limited to, test scores, notes, statements of the
16 defendant and anything else in formulating his
17 opinion.

18 All right. That's, uh, my ruling on the
19 admissibility of Dr. Gordon's testimony.
20 Mr. Fremgen, I ask that you draft an order
21 embracing that.

22 ATTORNEY FREMGEN: If I can get a copy of
23 the transcript as well, that might assist me in --

24 THE COURT: All right.

25 ATTORNEY FREMGEN: In regards to the

1 discovery, or the, uh, research and test results,
2 could we ask that the Court, uh, place some sort of
3 a condition on that? Since it is -- one item in
4 particular, the MMPI results, are proprietary,
5 that -- and I'm not -- I'm assuming the State's not
6 going to share this with the world, but if,
7 basically, uh, State agrees that whatever research
8 results in information they receive, that's
9 proprietary in nature be, uh, not shared with any
10 other parties?

11 THE COURT: You're asking for a protective
12 order --

13 ATTORNEY FREMGEN: Correct.

14 THE COURT: -- doing that? Any objection?

15 ATTORNEY FREMGEN: Other than an expert.
16 If they have experts, they can share with that.

17 THE COURT: Yeah. Yeah. That's
18 understood.

19 ATTORNEY KRATZ: Yeah. I probably wouldn't
20 be sharing with anybody anyway other than for court
21 purposes, Judge. The MMPI is in the public domain.
22 I don't believe that's proprietary. But,
23 nonetheless, for purposes of this trial, as long as
24 we get to use it at trial, and we get to show it to
25 our experts, um, that -- that's fine.

1 THE COURT: All right. Uh, let's move on
2 to the -- the motions that we have to be heard
3 today. Uh, the -- the first is a set of motions
4 that was filed by the defense. It's my
5 understanding that some of these may already have
6 been stipulated to between the parties, or that
7 there is -- certainly that there's no disagreement
8 about them.

9 I'm turning here to what is called the
10 second motion in limine, pretrial procedure
11 motions.

12 Um, the first motion there is a
13 sequestration motion, which is standard in any of
14 these cases. I suspect there's no objection to
15 that. Is that correct, Mr. Kratz?

16 ATTORNEY KRATZ: That's right, Judge.

17 THE COURT: The second is a -- a motion
18 prohibiting the introduction of evidence on, uh,
19 prior crimes or wrongdoings. So-called other acts
20 evidence of this defendant.

21 Uh, Mr. Kratz, is -- is that the -- the
22 subject of any contention at this point?

23 ATTORNEY KRATZ: It is not, Judge. Should
24 we seek to introduce any, uh, other acts evidence or
25 evidence under 9-0-4-0-4 (2), we will seek advance

1 ruling of the Court prior to, uh, engaging in that
2 kind of question.

3 THE COURT: All right. Uh, the third
4 motion talks about the individual voir dire of, uh,
5 prospective jury members. Uh, counsel and I will be
6 taking that, among other jury issues, up later --
7 later today. I've already told counsel it is my
8 present intention not to, uh, conduct a voir dire
9 that consists entirely of individual voir dire but,
10 rather, to do a -- a more standard voir dire with,
11 uh, occasional individual voir dire, depending upon
12 the, uh, responses of prospective jurors.

13 Uh, the next one is, uh, a request that
14 the court reporter take -- be requested to take
15 notes of the voir dire examination, opening
16 statements and all bench conferences. Uh, that
17 is pretty much standard practice with the
18 exception of the bench conference, um, request
19 here. And that is just simply a matter of the --
20 the geography of this courtroom and this bench.
21 Um, you want to be heard on that?

22 ATTORNEY FREMGEN: What I would simply ask
23 for is that at breaks we could go on the record and
24 somehow memorialize what may have gone on in a bench
25 conference.

1 THE COURT: That's fine. You have no
2 objection to that?

3 ATTORNEY KRATZ: No.

4 THE COURT: The next requested order is an
5 order limiting the State's use of photographs of the
6 deceased when alive, uh, on grounds of relevancy.
7 Uh, gentlemen, have you discussed that?

8 ATTORNEY KRATZ: We have. And I think
9 we've reached an agreement, Judge, as to all
10 photographs to be used, uh, in this case. I don't
11 want speak for Mr. Fremgen, but if that's not the
12 case, I think that he needs to alert the Court of
13 that. Otherwise, what we've shared with
14 Mr. Fremgen, I believe, he does not have an
15 objection to.

16 THE COURT: Is that correct?

17 ATTORNEY FREMGEN: I've received, uh, two
18 CDs of photographs and we have no objection to
19 what's within those two CDs.

20 THE COURT: All right. Uh, motion 7 and 8
21 go to the defendant's clothing during the course of
22 the trial and the non-use of -- of shackles. Uh,
23 uh, motion 8 requests the street clothing, and the
24 Court has already said it's going to grant that. In
25 fact, I think I granted it a long time ago. And

1 during the, uh -- during the course of the trial
2 when the defendant is in the observation of the
3 jury, he will not be shackled.

4 The last motion in that set of motions,
5 uh, request that the prosecutor re -- refrain
6 from stating his personal opinion of the
7 witnesses' credibility, the defendant's guilt or
8 innocence, the justness. And -- and it goes on
9 to quote a portion of the, uh, State Bar Code
10 of -- it's called the Lawyers Rules of
11 Professional Responsibility these days, uh,
12 20:3.4. Uh, presumably, Mr. Kratz, you're going
13 to live within that rule?

14 ATTORNEY KRATZ: Myself and, uh,
15 co-counsel, Judge, uh, although when -- we will
16 surely be commenting on the evidence. I'm sure we
17 will not state a personal belief.

18 THE COURT: All right. That's the -- those
19 are the initial set of motions that we are
20 considering.

21 The second motion is a motion submitted
22 by the State, uh, indicating the State's, uh --
23 the --

24 ATTORNEY FREMGEN: Judge, I'm sorry. If
25 you go --

1 THE COURT: I -- Did I miss one?

2 ATTORNEY FREMGEN: You skipped one.

3 Number -- On your sheet it's number seven. Oh, that
4 was addressed?

5 ATTORNEY KRATZ: He addressed them
6 together.

7 ATTORNEY FREMGEN: Oh, I'm sorry.

8 ATTORNEY KRATZ: We reached an
9 agreement.

10 ATTORNEY FREMGEN: Okay. That's fine. I
11 think that may have been the one you mentioned you
12 were following Judge Willis' previous ruling or --
13 on the display of memorials, etc.

14 THE COURT: Right.

15 ATTORNEY FREMGEN: Okay.

16 THE COURT: Right. Right. Yeah, and --
17 and I had talked about -- you're right, I didn't
18 talk about that specifically here today, but we
19 had talked about that previously.

20 Uh, the State's motion in limine
21 relating to the admissibility of DNA evidence.
22 Is there an agreement on that?

23 ATTORNEY FREMGEN: Judge, the defense is
24 not objecting to the State's use of -- we're not
25 going to, uh, contest the foundation. Um,

1 essentially, I -- I -- my understanding the State's
2 obviously going to still produce witnesses to
3 testify about the proc -- the process, the protocol,
4 the procedure, but we're not raising any objections
5 to those.

6 THE COURT: All right. I take it that's
7 satisfactory, Mr. Kratz?

8 ATTORNEY KRATZ: If I could just have one
9 moment, Judge.

10 THE COURT: Okay.

11 ATTORNEY KRATZ: We just wanted to make
12 sure, Judge, that the defense is not challenging the
13 admissibility of the evidence since this is an
14 admissibility issue. If, in fact --

15 ATTORNEY FREMGEN: Nope.

16 ATTORNEY KRATZ: -- that is, uh --

17 THE COURT: My understanding is,
18 Mr. Fremgen, that you are not challenging the
19 admissibility of it.

20 ATTORNEY FREMGEN: No, Judge.

21 THE COURT: No means we are not challenging
22 it?

23 ATTORNEY FREMGEN: We're not -- we're not
24 challenging the admissibility of the DNA evidence.

25 THE COURT: All right. Next set of motions

1 are -- are called the State's Motion in Limine,
2 Series 1.

3 Uh, the first of them is a motion to
4 preclude third party liability evidence. Um,
5 gentlemen, have you discussed this motion? And
6 this motion relates to, uh, if the defense
7 intends to introduce evidence that other -- uh,
8 that someone other than Steven A. Avery
9 participated in these offenses, uh, the -- uh,
10 which Mr. Dassey is now charged, the State
11 requests an offer of proof. Uh, is the defense
12 intending to produce any such evidence?

13 ATTORNEY FREMGEN: No, Judge.

14 THE COURT: The next is the motion to
15 exclude evidence that the Manitowoc County Sheriff's
16 Department or any other law enforcement agency
17 planted evidence to frame Steven Avery. The -- the
18 motion goes on to spell out with some specificity
19 what particular evidence the maker of the motion
20 refers to.

21 ATTORNEY FREMGEN: Judge, I'm sorry.
22 I -- I -- I believe I spoke to Attorney Fallon
23 yesterday in regards to this motion. Uh, our
24 intent is not to raise questions as to whether
25 evidence was planted. Obviously, we would

1 reserve any right to cross-examine officers and
2 that cross-examination may be -- we're not going
3 to cross-examine on planting, but we're not going
4 to simply -- we put it bluntly, I guess we can be
5 vigorous on our cross-examination, though we're
6 not going to raise the issue of planting. Is
7 that fair?

8 ATTORNEY FALLON: Um, I guess I need a
9 little -- Uh, no.

10 THE COURT: Yeah, it's fair, but it doesn't
11 really say much other than you're going to be
12 vigorous on your cross-examination. And I assume
13 you will be.

14 ATTORNEY FREMGEN: Well, our intent is
15 not -- that's not our defense. Our defense is not
16 that evidence was planted. I don't want this --

17 ATTORNEY FALLON: Does that -- does
18 that --

19 ATTORNEY FREMGEN: -- to be an issue.
20 What's that?

21 ATTORNEY FALLON: I was going to say,
22 when you say it's not going to be planted,
23 there's no evidence that it -- planted to frame
24 your client or dealing with a -- frame-up
25 evidence that was alleged in the Avery case?

1 Just so we are --

2 ATTORNEY FREMGEN: Well, I --

3 ATTORNEY FALLON: -- clear on it --

4 ATTORNEY FREMGEN: We are --

5 ATTORNEY FALLON: -- that there's no --

6 THE COURT: One at a time here.

7 ATTORNEY FREMGEN: I'm sorry. We're not
8 raising any frame-up theory of defense for either.
9 I just -- I -- I don't want the motion to make it
10 sound as if we're simply going to let the witnesses
11 speak to whatever they want to speak to without
12 having some sort of cross-examination, though. So,
13 as long as you're aware that we're going to still
14 ask questions.

15 ATTORNEY FALLON: About --

16 ATTORNEY FREMGEN: Not about planting.

17 ATTORNEY FALLON: And not about framing.

18 ATTORNEY FREMGEN: No.

19 THE COURT: All right. It's understood
20 that there'll be no questions about planting of
21 evidence of State's witness or framing anyone; is
22 that correct?

23 ATTORNEY FREMGEN: That's correct.

24 ATTORNEY FALLON: Okay.

25 THE COURT: The third of the State's set of

1 motions is a motion to preclude evidence of police
2 or investigative bias against Steven Avery. And
3 that motion goes on to name some persons who I
4 suspect were witnesses in the previous trial. Uh,
5 Mr. Fremgen?

6 ATTORNEY FREMGEN: We have no objection
7 with that.

8 THE COURT: All right. So any evidence or
9 any attempt to introduce evidence that there was a
10 police or investigative bias against Steven Avery
11 will not be permitted.

12 ATTORNEY FREMGEN: Against Steven Avery,
13 correct.

14 THE COURT: Correct. The last, and this
15 set of motions, is a motion to preclude evidence of
16 any lawsuit filed by Steven Avery against Manitowoc
17 County.

18 ATTORNEY FREMGEN: We don't believe that's
19 relevant in our case. We're not going to bring it
20 up.

21 THE COURT: Nor do I, as a matter of fact.
22 The next motion is a motion to allow, as testimony,
23 admission of a party opponent and, specifically,
24 what's sought to be admitted here, and this is the
25 defense motion, is remarks allegedly made, or a

1 remark allegedly made, in the rebuttal portion of
2 closing argument of Steven Avery's trial by Special
3 Prosecutor Kratz, in which he said, quote,
4 everything in this case pointed to one person,
5 towards one defendant, dot, dot, dot, follow the
6 Court's instruction and follow the evidence in this
7 case and return verdicts of guilty. End quote.

8 The motion goes on to set forth a basis
9 for its admission, although, I think,
10 Mr. Fremgen, you're citing here 9-0-8-0-1 (3). I
11 think you really mean 9-0-8-0-1 (4b1), uh, as
12 the -- the, uh, party opponent, uh, exception to
13 the hearsay rule.

14 ATTORNEY FREMGEN: I'm -- I'm, uh --

15 THE COURT: Looking at page two, number
16 five.

17 ATTORNEY FREMGEN: Correct.

18 THE COURT: And you also cite a number of
19 cases. Three federal cases. I think **United States**
20 **v. McKeon** is the first of them. **United States v.**
21 **Salerno** and, then, **United States v. DeLoach**. I'm
22 not going to give the citations at this, uh -- at
23 this point. They're all found in the -- or the
24 reporter citations. They're all found in your --
25 your argument.

1 And you also cite a Wisconsin case which
2 essentially adopts the holding in those three
3 cases, and that Wisconsin case is called **State**
4 **Cardenas-Hernandez** -- **State v.** -- excuse me -- of
5 **Cardenas-Hernandez** at 219 Wis. 2d, uh,
6 specifically at page -- well, it's at 531, but,
7 specifically, at page 532. You want to be heard
8 on this, Mr. Fremgen?

9 ATTORNEY FREMGEN: Judge, I guess I would
10 just rely upon the arguments in the -- the motion.
11 I don't have, yet, a transcript. I asked for one.
12 I understand it's taking some time for the court
13 reporter.. There's -- she has requests from a number
14 of transcripts from that trial. Um, I have nothing
15 else to add.

16 THE COURT: Mr. Kratz, do you wish to be
17 heard?

18 ATTORNEY KRATZ: I do, Judge. Um, as the
19 Court, uh, knows from its reading of the
20 **Cardenas-Hernandez** case, use of prior statements of
21 attorneys, uh, which include, uh, prosecutors, uh,
22 is, um, dicey, to use a -- a non-legal term. It's
23 admitted very rarely. In fact, was not, in the, uh,
24 Car -- uh, **Cardenas-Hernandez** case.

25 The reasons for that that appear to be

1 obvious, first of all, the dangers, uh, that an
2 attorney will become a witness are very real. I
3 don't know if Mr., uh, Fremgen is inviting me to
4 testify in this case, since he is asking that
5 this be allowed as testimony. I see many dangers
6 in, uh, that particular, um, procedure.

7 But, uh, it is usually not relevant as
8 using an argument from one proceeding, uh, most
9 necessarily, will lead a jury to draw an unfair
10 inference -- inference, especially, in this case,
11 when considering that, um, Mr. Avery was a
12 different case than Mr. Dassey's case. Uh,
13 different evidence was allowed. Um,
14 specifically, no, um, confession or admission of
15 Mr. Dassey, uh, was allowed, and the jury wasn't
16 asked to consider, uh, whether Mr. Dassey was
17 guilty, uh, or not guilty.

18 And so, uh, the final, uh, subject that
19 this Court should consider is whether there is an
20 explanation for the inconsistency, or perceived
21 inconsistently, and -- and there surely, uh, is
22 when the State invited the jury in the Avery
23 case, uh, to reject the planting theory as the
24 evidence pointed to one individual, uh, that was
25 because that was the Avery case. That the

1 evidence in that case, uh, pointed to Mr. Avery.
2 We fully intend to present evidence that
3 points to Mr. Dassey, uh, in this prosecution
4 since this is a separate prosecution. Frankly,
5 if they were the same case, they would have been
6 joined for trial. Because they are not, and
7 because evidence, in fact, legally, in one case,
8 could not be admitted in the other case, uh,
9 that, uh, should provide the Court all the
10 explanation, uh, it needs.

11 For all of those reasons, Judge, uh, I
12 would ask the Court adopt the, uh, generally
13 held, um, provision that these kinds of arguments
14 are not to be considered testimony in a
15 subsequent, especially a different case, and deny
16 the request for, uh, admission of this argument.
17 That's all. Thank you.

18 THE COURT: All right. Mr. Fremgen, any
19 response?

20 ATTORNEY FREMGEN: No, Judge.

21 THE COURT: Uh, the Court has considered
22 the materials submitted by Mr. Fremgen. I've also,
23 uh, read the -- the federal cases, the three of
24 them, um, I think it's, uh, **McKeon, Salerno** and
25 **DeLoach**.

1 I -- I'm note -- I'll quote here just
2 from **Salerno**, which -- which picks up what was
3 originally decided in **United States v. McKeon**.
4 Uh, it says that, uh, the court must be satisfied
5 that a prior argument involves an assertion of
6 fact inconsistent with similar assertions in a
7 subsequent trial.

8 Uh, second, the court must determine
9 that the statements of counsel were such as to be
10 the equivalent of testimonial statements made by
11 the client. And I'm quoting here from **U.S. v.**
12 **Salerno** at, uh, 937 F. 2d, uh, 797.
13 Specifically, from page 811. Uh, the -- the
14 holding of that -- there's a -- there's a third
15 part -- third prong, to that test as well. Uh,
16 the holding of that has been -- been picked up
17 by, uh -- as I noted before -- by **State v.**
18 **Cardenas**, uh, **State**, uh -- **State v.**
19 **Cardenas-Hernandez**. Here we have a statement,
20 everything in this case pointed to one person
21 towards one defendant. Follow the court's
22 instruction and follow the evidence in this case
23 and return verdicts of guilty.

24 Well, it's true. The case did point
25 to -- to one person. That was the only person

1 being tried at the case. Uh, the evidence
2 pointed that person because the -- the admissions
3 that are the -- part of the subject of this case
4 were -- were not used as part of that case.

5 At best -- at very best, this is -- this
6 is an equivocal remark by the special prosecutor.
7 I haven't seen the context. Even if I did see
8 the context, I doubt that my mind would -- would
9 change. I think it was entirely permissible.

10 I don't think it becomes, under the --
11 the test spelled out in these federal cases, in
12 **State v. Cardenas-Hernandez**, uh, an admission by
13 a party opponent. Not by a long shot.

14 Uh, excuse me. Therefore, I'm going to
15 respectfully deny your motion, Mr. Fremgen.

16 The next sets of motions are the State's
17 Motions in Limine, Series 2, and they fall into
18 two general categories.

19 The first of them I will characterize,
20 simply, um, by the -- the title, Statements of
21 Brendan Dassey, and they amount to, uh, some
22 statements allegedly given to -- to investigative
23 agents, uh, in November of 2005. Uh, apparently
24 a -- a statement allegedly made to, uh, Cassie
25 Fiala. Uh, then, statements made to Detective

1 Wiegert and Special Agent Fassbender.

2 I think all of those have basically been
3 admitted. Uh, those are statements on -- made
4 February 27 and March 1. And then there are a
5 series of telephone -- recorded telephone calls
6 from the defendant to, uh, his mother, from the
7 defendant to his mother and another, then there's
8 also the May of 13, 2006 statement to Special
9 Agent Fassbender and Detective Wiegert at the
10 Sheboygan County Sheriff's Department.

11 And, lastly, uh -- well, I shouldn't say
12 lastly. Uh, second lastly, is a letter from the
13 defendant to me, the Court.

14 And, lastly, is other recorded
15 statements made by Brendan Dassey to, uh, his
16 mother, Barb Janda.

17 Generally speaking, with respect to the
18 phone conferences made by the defendant, um,
19 while he was incarcerated, uh, it's my
20 understanding that under -- under -- under, 968,
21 uh, 31, (2b) and 968.28 (2b), uh, that as long as
22 there's one party consent, and as long as the
23 party who consented is available to authenticate,
24 or someone else is available to authenticate,
25 the -- the phone calls, that they are -- uh, they

1 are going to be admitted.

2 Uh, the defendant will -- and this is
3 assuming that the -- the appropriate, uh, uh,
4 language is found at the beginning of the phone
5 call advising the defendant that these are going
6 to be recorded and that, uh -- that -- that
7 recordation, uh, is going to occur. That has
8 been deemed in -- in case law to be an implied
9 consent.

10 Now, any admission is -- is, of course,
11 subject to relevancy considerations but, to -- to
12 sort of speed this up, uh, Mr. Fremgen, is that
13 your understanding of the law?

14 ATTORNEY FREMGEN: Attorney Edelstein's
15 going to argue that motion.

16 THE COURT: Attorney Edelstein.

17 ATTORNEY EDELSTEIN: Your Honor, despite,
18 uh, not necessarily agreeing with the ruling that,
19 uh, indicates that it's an implied consent, because,
20 obviously, our client was not in a position to make
21 a choice, there were no other options available, um,
22 I think that is a correct statement of the law under
23 **Riley**.

24 So, to the extent the Court is
25 addressing the telephone calls, um, from the

1 defendant, um, based upon that ruling, uh,
2 understanding the admissibility, we would only
3 ask the Court require the State to provide to us,
4 with some specificity, those particular calls
5 they intend to use and making specific reference
6 to the tracks on the CDs that we've been
7 supplied.

8 We have a multitude of CDs. A lot of
9 phone calls. And while the CDs indicate a date
10 range, there was no way to reference them
11 individually, um, simply by looking at that. And
12 it's purely speculation on our part. I think
13 we're certainly entitled to more specific notice.
14 I think the State has that capability, obviously,
15 um, and we would ask the Court require that as a
16 condition of that portion of their motion that
17 the Court has ruled on relative to the phone
18 calls.

19 THE COURT: Mr. Kratz?

20 ATTORNEY FALLON: Your Honor, I'll be
21 handling this, uh, motion --

22 THE COURT: Oh.

23 ATTORNEY FALLON: -- for the State.

24 THE COURT: Mr. Fallon.

25 ATTORNEY FALLON: Thank you. Um, first

1 and foremost, I think the -- the **Riley** case is
2 dispositive, and absent other relevant
3 evidentiary objections, I think the calls are
4 admissible.

5 Um, secondly, with respect to, uh,
6 adequate notice, with all deference to Counsel, I
7 must disagree. It seems to me that is exactly
8 why we're here today. That is the point of the
9 notice of intent and motion to possibly admit
10 these statements.

11 I can't tell you right now whether, uh,
12 all of these statements will be utilized by the
13 State's -- in its case in chief. Um, however,
14 the point of the motion hearing today was to
15 determine whether or not any -- there was any
16 contest or other legal bases to deny
17 consideration of those.

18 Most notably, the voluntariness that --
19 of any of these statements, or the **Miranda**, or,
20 uh, as we've just discussed, viz-a-viz the
21 telephone calls, whether there's adequate, uh,
22 notice, uh, to, uh, come with under -- come
23 within the umbrella of implied consent. And I
24 think we've met that. Um, we've specifically
25 indicated the day the call and to whom the call,

1 uh, or who the participants in the call was. I
2 don't think we need more, uh, for adequate
3 notice.

4 And, third, um, a lot of what could be
5 used in this case depends in large part what
6 evidence the defense will introduce in their case
7 in chief. Many of -- of our calls here, um, are
8 being, um, we're seeking an advance ruling, may
9 very well be rebuttal or reply evidence, to which
10 we really technically don't have to give notice
11 yet as of this time, but we sought to put it all
12 in there just to deal with it now rather than
13 having to deal with it in mid-trial or before the
14 case start -- before the State starts its
15 rebuttal case.

16 But I think the fact that we've given
17 him notice of the date, uh, and the participants
18 of the call and a -- and a copy of the call is --
19 is more than, uh, sufficient notice.

20 ATTORNEY EDELSTEIN: Your Honor, if I
21 might respond very briefly.

22 THE COURT: GO ahead.

23 ATTORNEY EDELSTEIN: In the motion,
24 letter N makes reference to any other recorded
25 statements. Now, I will concede that to the best

1 of our knowledge the State has provided us any
2 telephone calls made by our client to his mother,
3 Barb Janda. But, again, that is so wide open and
4 there are so many that it's virtually impossible
5 to know with any specificity what that relates
6 to.

7 Additionally, as to J, the May 13
8 telephone call, the Court has, to my
9 understanding, not specifically ruled as to what
10 we'll call the May 13 statement to the police.

11 The telephone call, which is the subject
12 of J is intricately tied to that and there's a
13 significant issue as to the, um, I think
14 admissibility based upon a voluntary issue given
15 the nature of the exchange between the defendant
16 and the police officers, uh, toward the end of
17 that particular interview.

18 It was -- and -- precisely, what I'm
19 referencing, Your Honor, is the police officers
20 made it quite clear that he had to call his
21 mother, and he had to call his mother that day
22 once they were done with that interview. They
23 made it quite clear that they were going to talk
24 to her if he did not. He needed to do it before
25 they did. They're clearly in a position where

1 they understand that any phone calls he makes are
2 going to be recorded.

3 So, in effect, they're posturing
4 themselves to create, uh, what they hope and
5 arguably might be based upon the State's desire
6 to use that particular phone call, an
7 incriminatory statement. So that one, I think,
8 has to be dealt with quite separately, perhaps,
9 from some of the others.

10 THE COURT: Mr. Fallon?

11 ATTORNEY FALLON: Well, I have several
12 thoughts on that. Uh, the letters I and J in the
13 motion on page two, whether you deal with them
14 individually or jointly, the question still comes
15 down to this:

16 Is there an objection, and that's the
17 point of the motion, as to the voluntariness of
18 tho -- of that statement. And if Counsel wants
19 to tie J to I, then fine, we'll do that. Let's
20 take up I. The question is this:

21 Was Mr. Dassey adequately Mirandized.
22 Question number one.

23 Question number two, was, uh, the
24 balance of the statement, and in the totality of
25 the circumstances, was the statement voluntarily

1 obtained?

2 Those are the questions.

3 Third, if you want to tie the subsequent
4 telephone call, let us not lose sight of the fact
5 that whether the officers suggested, told,
6 demanded or asked Mr. Dassey to talk this matter
7 over with his mother, does it really matter?

8 The fact is, Mr. Dassey chose to make
9 the call and, like anyone else, chose to seek
10 counsel from his mother.

11 What makes that statement presumably
12 involuntary is beyond me. It's a choice to make.
13 A discussion was held. The parties are aware the
14 matter is being recorded. Those are the
15 preliminary issues that we must deal with to
16 determine the admissibility.

17 If the defense wants to make use of
18 those statements in some other capacity,
19 viz-a-viz this whole false confession scenario,
20 then that is, of course, their choice to do in
21 their case in chief either with or without
22 assistance of Dr. Gordon.

23 So, again, the question for today is is
24 there a challenge to the voluntariness to the
25 **Miranda** of the statement, uh, referred to in

1 letter I? And, if not, then I don't see how what
2 occurred in the subsequent telephone call, uh,
3 several hours later, or an hour later, I -- my --
4 escapes me as to how much time passed -- I don't
5 see how that makes that statement inadmissible.

6 THE COURT: Well, here, Mr. Edelstein,
7 are -- are you objecting on voluntariness grounds to
8 I and J? And, if so, are you requesting that the
9 Court, uh, view whatever I -- I assume I is a -- is
10 a DVD or is on DVD -- and listen to J?

11 ATTORNEY EDELSTEIN: We are not objecting
12 to I on the basis of voluntariness. That particular
13 statement, however, I believe is still subject to
14 the defense motion, which this Court has yet to rule
15 upon based upon ineffective assistance.

16 That's a little different than the
17 February 27 and the March 1 statements where
18 prior counsel had conducted a hearing and we
19 attempted to re-litigate that issue and the Court
20 found that that was a, um, post-judgment issue.
21 So that's the only basis of an objection as to
22 the May 13 statement by the defendant.

23 I think the issue on J, while it is not
24 a statement to a police officer, it was promoted,
25 encouraged and almost insisted that he make that

1 phone call. These are police officers. This is
2 a very vulnerable individual. That is tantamount
3 to the creation, the coercive creation, of
4 evidence. It's different than when you start.
5 He may have made a voluntary statement, but
6 that's a totally different issue. That is the
7 creation by experienced police officers of what
8 they know and reasonably believe to be admissible
9 against him.

10 When a -- an individual like that, in
11 that circumstance, is encouraged to make that
12 type of call, the officers knowing full well that
13 this is a -- something that may be used against
14 him, I think that that has to be looked at
15 separately from that portion -- from the rest of
16 the statement itself. Uh, taking the position
17 that that, in and of itself, because of the
18 conduct, uh, was, in fact, the creation of
19 involuntarily produced evidence.

20 And I think the Court, from a review of
21 that particular portion of the, uh, DVD, would be
22 in a best position to determine whether or not
23 that's the case. If necessary, uh, one of the
24 officers could be called and examined to
25 determine, uh, what their purpose in doing that

1 was. There can be no other logical conclusion
2 other than it was their intent, knowing full well
3 that these are being recorded, to create that
4 type of evidence against the defendant.

5 THE COURT: Mr. Fallon.

6 ATTORNEY FALLON: Yes, two points. One,
7 with respect to, um, the law enforcement, uh,
8 interrogation on May 13, item I, the -- I take it,
9 then, that there's no objection to **Miranda** or
10 voluntariness. And if that's the case, then the
11 only matter of issue or consequence to the defense
12 appears to be the ineffective assistance of counsel
13 claim.

14 Well, then, I have two comments to make
15 viz-a-viz that. First, it's not ripe at this
16 time and, quite frankly, it may never be ripe,
17 um, for a determination of, one, deficient
18 performance, and, two, prejudice. Because any
19 constitutional claim, there's no violation until
20 the statement is actually admitted. And, then,
21 you have to evaluate it in the general context of
22 all the other factors.

23 Um, so if the statement is never
24 admitted by a party, particularly the State, it's
25 not an issue. If the statement is utilized by

1 the defense, then they can't claim that issue.

2 Now, with respect to the, um, telephone
3 call, it matters not. It is the matter -- The
4 only issue is, who initiated the call? And so
5 un -- under these circumstances, there's no
6 question as to the voluntariness of the call. It
7 was a choice of Mr. Dassey, the defendant, to
8 call and seek counsel of his mother. Whether he
9 was -- again, whether he was suggested, told to,
10 or whatever, time passed, he was alone, he had
11 time to think, he made a call. I don't see how
12 that's involuntary. I'll await the Court's
13 ruling.

14 THE COURT: Yeah. All right. Uh,
15 Mr. Edelstein, your -- your last shot here.

16 ATTORNEY EDELSTEIN: Interrogations have
17 the ebb and flow. We've all seen that. There are
18 times when people assert their rights and police
19 officers say things to persuade them to come off of
20 that. That very last portion of this interrogation,
21 if you will, that really had nothing to do with any
22 questions to Brendan, other than, for example, when
23 will you call her, which is not intended to gather
24 any statement of him eliciting an inculpatory
25 response, but is, in fact, intended to create a

1 separate evidentiary item which these officers knew,
2 had to know, was going to be preserved, that they
3 could use against him later, seeking to have him
4 make inculpatory statements to a third person.

5 At that point, I think, the issue of
6 voluntariness does, again, become an issue.

7 Now, am I saying it required a separate
8 warning? No, I'm not. But if we evaluate this
9 on the totality of the circumstances, I believe
10 the Court is in the best position upon a review
11 of that portion. This wasn't just a simple
12 request. Brendan, you should talk to your mom
13 about what we talked about here today. It was
14 very specific, um, and tantamount to coercion.
15 Therefore, it's not voluntary. I don't think
16 that that statement -- that phone call, uh,
17 should be admitted.

18 ATTORNEY FALLON: Well, then, maybe we need
19 to have a hearing and Mr. --

20 THE COURT: I ask --

21 ATTORNEY FALLON: -- Dassey will need to
22 take the stand.

23 THE COURT: Well, here's what we're going
24 to do. I -- I hear -- I'm hearing about what was
25 said and -- and how it was said, but I've never seen

1 it nor have I heard it. Uh, so I've got to take a
2 look at it. Uh, I'll reserve ruling on I and J.

3 What I would like to do, because we
4 don't have a whole lot of time here, is, uh, take
5 a look -- if I can get a copy of the DVD, as well
6 as this particular phone message, I'll listen to
7 them over the weekend and, uh, if time permits,
8 and I think it does for me on Monday, we can come
9 back and we can -- we can talk about this again.
10 I'll rule on it.

11 Uh, as to your argument about
12 ineffective assistance of counsel, uh, I -- I
13 understand certainly the substance of the
14 argument, but, uh, the Court, uh, in ruling the
15 last time, it was raised in a slightly different
16 context, said that until the case is over, that
17 is not ripe for a decision or even discussion.
18 All right.

19 Uh, with respect to the rest of them,
20 the rest of the requests here, and maybe I'll
21 just -- I'll just go from -- from A to N, uh, any
22 objection, defense, to A?

23 ATTORNEY EDELSTEIN: No.

24 THE COURT: And those are statements, or
25 that is a statement that -- that -- uh, how about B?

1 ATTORNEY EDELSTEIN: No.

2 THE COURT: C?

3 ATTORNEY EDELSTEIN: Your Honor, we do
4 object to that. We do not believe that it's
5 relevant and it's highly prejudicial.

6 THE COURT: Well, subject to -- subject to
7 and -- and relevancy is always a consideration, but
8 subject to a relevancy objection, and, again, I
9 don't know what's on that tape, but subject to a
10 relevancy objection? This is -- if -- if it's a
11 statement by Brendan Dassey, it's probably a
12 9-0-8-0-1-4-b-1 statement, depending upon what it
13 says. You agree?

14 ATTORNEY EDELSTEIN: I agree, Your Honor.
15 But, again, I think once that, um -- Perhaps that's
16 something we could have the Court rule on in advance
17 if the parties agree to allow the Court to review
18 that particular statement. It's our position that,
19 um, the prejudicial value heavily outweighs any
20 relevancy.

21 THE COURT: All right. I'll do that. Uh,
22 D? Do you have any objection to D? I think it's
23 already been admitted.

24 ATTORNEY EDELSTEIN: No.

25 THE COURT: E? F? G?

1 ATTORNEY EDELSTEIN: No, Your Honor.

2 THE COURT: H? It's a recorded phone
3 conversation of March 7 from the defendant to his
4 mother.

5 ATTORNEY EDELSTEIN: No, Your Honor.

6 THE COURT: K? Statements in a recorded
7 phone call from the Sheboygan County Jail from the
8 defendant to his mother?

9 ATTORNEY EDELSTEIN: No, Your Honor.

10 THE COURT: L? The May 18, 2006 statements
11 in a recorded telephone call of Brendan Dassey to
12 Barb Janda and Candy Avery, including, but not
13 limited, going over to the Steve Avery bonfire about
14 7:00 p.m. on October 31 and being in the garage and
15 cleaning up some reddish brown stuff on the garage
16 floor?

17 ATTORNEY EDELSTEIN: No, Your Honor.

18 THE COURT: M? The June 30, 2006 letter
19 from the defendant to the Honorable Jerome Fox,
20 Circuit Court Judge, Manitowoc County Circuit Court?

21 ATTORNEY EDELSTEIN: No objection.

22 THE COURT: And, N, any other recorded
23 statements made by Brendan Dassey to his mother,
24 Barb Janda?

25 ATTORNEY EDELSTEIN: Your Honor, again

1 that's --

2 ATTORNEY FALLON: Let me -- let me help you
3 out on that one. If -- if -- if -- we put that in
4 just in case we missed something, and, uh -- but it
5 would be within that category or context. And let
6 me just say this, if we do identify another
7 statement that was somehow overlooked, we'll provide
8 notice immediately and then we can briefly discuss
9 whether it's of issue or not.

10 THE COURT: All right.

11 ATTORNEY EDELSTEIN: That's fine, Your
12 Honor.

13 THE COURT: With that consideration? All
14 right. Now, the second part of the motion deals
15 with statements by Steven Avery and Barb Janda. Uh,
16 and the justification or the basis for the motion is
17 that the statements are in furtherance of the
18 conspiracy to cover up the crimes of first degree
19 murder and constitute attempts to intimidate a
20 witness under Section 940.43 (4), and which may
21 include an attempt to suborn perjury.

22 Uh, second, all of this behavior on
23 behalf of Steven Avery and Barb Janda constitute
24 other acts of both Janda and Avery which fully
25 explain the defendant's recantation and which

1 refute the defense of false confession.

2 Third, such statements are offered for
3 the subsequent effect of them on the listener,
4 Brendan Dassey.

5 Lastly, these statements constitute
6 information utilized and relied upon by the
7 expert witnesses in this case.

8 And we start off with, A, an October 31,
9 2005, 5:36 p.m. statement in a recorded cone --
10 phone call from Jodi Stachowski to Steven Avery.

11 I don't know how I can be ruling on
12 these at this time. Certainly -- oops.
13 Certainly not on that one. I have no idea what
14 it is. What relevancy it may or may not have.
15 Uh, the conspiracy theory? What? Is this,
16 again, we're at 9-0-8-0-4-1?

17 ATTORNEY FALLON: There are several
18 possible theories regarding the admissibility of
19 these statements and there's also determinate --
20 there also is a conceivable ruling or understanding
21 of the evidence that it may not be admissible.

22 We're in a bit of a difficult spot
23 because we don't know -- we -- the Court has just
24 ruled now, for instance, as to the admissibility
25 of Dr. Gordon's opinion. And, as such, uh, what

1 effect any of this additional information may
2 have in any cross-examination of Dr. Gordon.
3 That's clearly one issue here. Because he's
4 going to be taking into consideration, if he's
5 making opinions regarding, uh, suggestibility,
6 although, I realize the Court has somewhat
7 circumscribed the scope of his opinion-giving
8 testimony.

9 Um, secondly, again, a lot may very well
10 depend on how the defense presents their case,
11 uh, as to whether this statement or several of
12 the succeeding statements are, in fact,
13 admissible.

14 I just wanted to bring it to everybody's
15 attention that these statements are out there.
16 It may require further hearing down the road, or
17 we may forgo any attempt to introduce it at all.
18 We're kind of in a situation of trying to respond
19 and guess what -- what the defense -- the --
20 the -- the actual focus of the defense will be on
21 this.

22 So it's there. Out there. I mean,
23 Counsel rightly anticipated this as an issue in
24 his motion. He filed his motion, I guess, an
25 hour or two before we, uh, filed ours. So, um,

1 it's clearly an issue that's subject for
2 discussion. But, you're right, I'm not sure we
3 can rule on all of this today.

4 THE COURT: Mr. Fremgen or Mr. Edelstein?

5 ATTORNEY EDELSTEIN: Your Honor, I guess
6 the -- I -- I would concur with, uh, Counsel's last
7 statement. That is, it is going to be difficult to
8 determine this with any precision today.

9 We have a general objection because,
10 first of all, uh, the assertion in their motion
11 that the statements, uh, were utilized and relied
12 upon our expert, um, I do not believe is correct.
13 But even further than that, we don't have any
14 type of, uh, conspiracy charged here. We have
15 statements from, um, an individual and
16 individuals who are not those of our client.

17 We have no idea what portion or all of
18 these statements the State deems to be relevant.
19 Uh, I think it is an issue that is probably left
20 open at this point. Uh, we do object to that.
21 Again, though, on the basis that we do not have
22 even a threshold, um, under the case law.

23 And in that regard, I direct the Court's
24 attention to, uh, **State v.** -- and I'll spell
25 it -- **S-a-v-a-n-h**, that's at, um,

1 287 Wis. 2d 876. The analysis under there is
2 such that I don't believe that the statements
3 from Steven Avery or phone calls from Steven
4 Avery, um, to Barb Janda or, for that matter,
5 anyone else would be admissible.

6 ATTORNEY FALLON: Well, let me offer this
7 observation, uh, and reply to the last comment.
8 Counsel is correct that as we referenced a number of
9 these phone conversations, I think it's fair to say
10 that of a 15-minute conversation that we've
11 identified, there may be a minute or two that is,
12 arguably, relevant, depending on the context in
13 which the State may choose to use it.

14 So, I -- I would concede with Counsel,
15 that's true and that's what makes this difficult
16 because we're not really sure where they're going
17 and how they're going to present their defense.
18 So it would require a -- a little more pinpoint
19 accuracy with respect to the particular
20 statements. So I'm prepared to accept that as a
21 proposition and that's one of the reasons why I
22 say I don't -- we're not seeking a ruling of
23 admissibility today. This is more in the context
24 of a notice that there may be an issue down the
25 road.

1 With respect to the conspires --
2 conspirator issue, let me offer, um, some insight
3 from Professor Blinka in his book. And this is
4 in Section 801.505, um, page 567, I think, in his
5 most recent, um, treatise.

6 It said, statements by coconspirators
7 relating to escape, coverups or intimidating
8 witnesses are not admissible under this rule
9 unless it can be shown that a coverup was part of
10 the original plan, or unless the evidence
11 demonstrates that a second conspiracy was formed
12 to conceal the misdeeds of the first.

13 So as -- as -- that may be a viable
14 theory for some of these statements, we're
15 certainly not offering that for all of the
16 statements. A -- again, um, there -- depending
17 upon the statement and the manner in which we
18 choose to use it to respond to what we think has
19 been offered by the defense, will -- the -- the
20 theory of admissibility will change depending on
21 the statement and the context.

22 And -- and that's why I say it's not --
23 I don't think it's ripe for a decision today
24 because we may choose to use none of them. We
25 may use just two of them. And I would

1 acknowledge to Counsel that we'd have to sharpen
2 the focus and -- and present, briefly, uh, to you
3 exactly what the statement is and what our theory
4 of admissibility is based on the context of the
5 evidence at the trial at the time.

6 And, again, this comes in in our
7 rebuttal case, not in our case in chief. So
8 there will be time to deal with it and address
9 it. We wanted to give the parties and the Court
10 fair notice that this is an issue that is looming
11 out there but may never need to be addressed.

12 THE COURT: All right. Uh, I had a chance
13 to -- to go through these, and these are -- are
14 alphabetized here has A through K, uh, various
15 statements made and phone conversations in which
16 Steven Avery was involved, and I -- I could, I
17 suppose, conceivably see that some of these might be
18 admissible under some theory, some, uh, you're going
19 to have to do a lot of talking and theorizing to
20 convince me that they -- they have any validity as
21 part of this trial.

22 But, whatever the case may be, I'm --
23 I'm going to withhold, uh, ruling. I'm in no --
24 I haven't heard any of them. Uh, there's no
25 context here at this point in which to -- in

1 which to intelligently determine what it is these
2 statements -- first, what parts are going to be
3 used. Secondly, what it is they're going to be
4 used for. So I think at this point it would be
5 premature to -- to make a ruling on any of these
6 statements. And, uh, as I said, I'm withholding
7 it.

8 Just -- just for the reporter's record,
9 the -- the **Riley** case, that Mr. Edelstein
10 referred to, was **State v. Riley** at
11 287 Wis. 2d 244.

12 Now, is there anything else, uh, to come
13 before on motions?

14 ATTORNEY KRATZ: Judge, there were two, uh,
15 issues that, uh, previous counsel had addressed.
16 One was a filing a notice of alibi, the other was
17 filing a notice of presentation of learned treatise.
18 I understand from, uh, preliminary discussions with
19 Mr. Fremgen, that the defense intends to withdraw
20 those. And that should be done on the record.

21 THE COURT: All right. Mr. Fremgen, you
22 heard what Mr. Kratz said, did you not?

23 ATTORNEY FREMGEN: Yes, Judge. We, uh --
24 those were filed by previous counsel. We don't, uh,
25 intend to use learned treatise, and I believe prior

1 counsel intended to use that in lieu of an expert.
2 Um, I think we're beyond that point.

3 And, second, as to alibi, I wasn't
4 entirely sure as to the context of that motion,
5 but we would withdraw it in any regard.

6 Uh, and last, I would just note for the
7 record that I -- the defense will provide to the
8 State, some time after the hearing today, our
9 witness list as well.

10 THE COURT: All right. Now, I -- I said
11 that I wanted to, with respect to items, uh -- I
12 think they were J and K?

13 ATTORNEY FREMGEN: Right.

14 THE COURT: That I wanted to set --

15 ATTORNEY FALLON: I and J.

16 THE COURT: I and J.

17 ATTORNEY FALLON: And we'll also get you a
18 copy of the uh, uh, report dealing with item C.

19 THE COURT: Okay. I'm -- I'm just going to
20 have to get the -- the Court's schedule here and
21 we'll set something. Okay.

22 ATTORNEY FALLON: Judge, may I make a
23 suggestion with counsels', um, input? I don't think
24 it would be -- it would take that much time. Is
25 there any chance that we could maybe take a half an

1 hour Thursday morning at, say, 8:30, before we start
2 the jury process at 9, and just finish up on that,
3 just to give your opinion and ruling, as opposed to
4 coming back on Monday? What to you think?

5 ATTORNEY FREMGEN: That -- that --
6 that --

7 THE COURT: That's fine. We would be -- we
8 would be doing this in Madison then?

9 ATTORNEY FALLON: Yeah.

10 THE COURT: Sure.

11 ATTORNEY FALLON: If that's all right.

12 THE COURT: It's fine with me.

13 ATTORNEY FALLON: Uh, that would save time
14 and -- your time and ours.

15 ATTORNEY FREMGEN: I think they probably
16 have to use the video -- the -- the movie they watch
17 before the jury selection. So while they're
18 watching that, we could do --

19 ATTORNEY FALLON: We could finish up on
20 this.

21 THE COURT: Sure. Sure. Let's do it --
22 we'll do it then that way.

23 ATTORNEY FALLON: That would be great.

24 THE COURT: Okay. Anything else?

25 ATTORNEY FALLON: No.

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THE COURT: If not, we're adjourned.
Counsel, I'll see you in chambers.

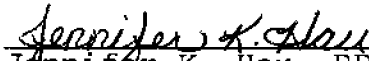
(PROCEEDINGS CONCLUDED.)

1 STATE OF WISCONSIN)
) SS.
2 COUNTY OF MANITOWOC)

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I, Jennifer K. Hau, Official Court
Reporter for Circuit Court Branch 3 and the State
of Wisconsin, do hereby certify that I reported
the foregoing matter and that the foregoing
transcript has been carefully prepared by me with
my computerized stenographic notes as taken by me
in machine shorthand, and by computer-assisted
transcription thereafter transcribed, and that it
is a true and correct transcript of the
proceedings had in said matter to the best of my
knowledge and ability.

Dated this 10th day of April, 2007.



Jennifer K. Hau, RPR
Official Court Reporter

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
VOIR DIRE - DAY 1

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 12, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

THOMAS 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.

COPY

1 * * * * *

2 **TRANSCRIPT OF PROCEEDINGS**

3 Reported by Jennifer K. Hau, RPR

4 Official Court Reporter

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1 THE COURT: Counsel, are we ready to
2 proceed? Court is going to call the case of State
3 of Wisconsin vs. Brendan R. Dassey, 06 CF 88.
4 Appearances, please.

5 ATTORNEY KRATZ: The State appears by
6 Calumet County District Attorney Ken Kratz. Also
7 appearing is Assistant Attorney General Tom
8 Fallon, Assistant District Attorney Norm Gahn,
9 all appearing as special prosecutors.

10 ATTORNEY FREMGEN: Attorney Mark Fremgen
11 appears with Attorney Ray Edelstein. Brendan
12 Dassey appears in person.

13 THE COURT: Yeah. Could you move the
14 microphone closer? We're having a little trouble
15 hearing.

16 ATTORNEY FREMGEN: Attorney Mark Fremgen
17 appears with Attorney Ray Edelstein. Brendan
18 Dassey, defendant, appears in person.

19 THE COURT: All right. This matter is set
20 today for a jury pick. Before we get to that, there
21 are a couple of, uh, issues that the Court has to
22 complete. The first of those is that on April 5,
23 2007, at a motion hearing in, uh, Branch 3 of the
24 Manitowoc County Courthouse, uh, the Court made a
25 number of rulings on a number of different motions.

1 One of the motions, and I'm referring
2 here to a Motion in Limine, Series II, Roman
3 Numeral II, filed by the State, contained at --
4 in the first part of that motion a request to
5 admit a number of telephone conversations and
6 interviews between the defendant and law
7 enforcement officers.

8 Uh, the one item, as I understand it, at
9 issue today is Item J on that list, which was a
10 May 13, 2006, phone call that this defendant made
11 from the Sheboygan County Jail to his mother.

12 Uh, that item was preceded by Item I, which is a
13 May 13, 2006, statement given by the defendant in
14 an interview to law enforcement authorities.

15 It's my understanding -- and here I'm
16 addressing you, Mr. Edelstein -- it's my
17 understanding that you have no current objection
18 to the admission of that statement. At least no
19 objection based on voluntariness. That, in fact,
20 uh, you believe that this goes to an issue called
21 "ineffective assistance of counsel" which I have
22 said on previous motion rulings that, uh, would
23 be heard after the -- the resolution of trial in
24 this case. Is that an accurate summary?

25 ATTORNEY EDELSTEIN: It is, Your Honor.

1 THE COURT: But you still object to, uh, J;
2 is that correct?

3 ATTORNEY EDELSTEIN: Yes, Your Honor.

4 THE COURT: Could you bring your microphone
5 over, please? Uh, J is a telephone conference, as I
6 noted before, between the defendant and his mother,
7 which occurred on May 13, the same date that the
8 defendant gave a statement to, uh, law enforcement
9 authorities. Uh, the motion was argued at the
10 April 5, 2007, motion hearing.

11 Since that time, I have received a copy
12 of the DVDs of the May 13 interview, as well as a
13 copy -- a CD containing the phone conversation
14 between the defendant and his mother.

15 Uh, does either party wish to be heard
16 any more on this today? I think, Mr. Fallon, you
17 were the proponent of the -- of the motion
18 admitting this as evidence, and -- and
19 Mr. Edelstein was objecting to it. Uh, I heard,
20 and I've since reviewed the transcript. But far
21 be it from me if you have something else to say
22 today?

23 ATTORNEY FALLON: Just two points. One,
24 I think the Court was correct in that insofar as
25 the **Riley** case is really dispositive of that

1 issue.

2 And, secondly, even if there was not an
3 implied consent theory, there still is, uh, under
4 our, uh, electronic surveillance law, the -- the
5 tape is, nonetheless, admissible, um, under
6 statutory interpretation as well.

7 So under either theory, I think the
8 conversation is admissible evidence.

9 THE COURT: All right. Mr. Edelstein,
10 anything further?

11 ATTORNEY EDELSTEIN: Your Honor, as to
12 the State's authority to record those calls, we
13 certainly don't take any issue with that. Our
14 point simply was that we believe that that
15 statement, um, that was created on the 13th by
16 that telephone call, was as a result of the
17 improper inducements and coercion against the
18 defendant brought about during the course of the
19 5/13 interview between our client, Special Agent
20 Fassbender and Detective Wiegert.

21 And I believe the Court has had an
22 opportunity to review that. There were multiple
23 references to, uh, the concept that our client
24 needed to make this phone call, and that was
25 repeated several times.

1 Beyond that, we have no other argument,
2 Your Honor.

3 THE COURT: All right. Uh, at the April 5,
4 2007, motion hearing in Manitowoc, as I noted, the
5 defendant objected to the admission of the May 13,
6 2006, phone conversation between him and his mother,
7 Barb Janda.

8 According to defendant's counsel, the
9 phone conversation closely followed an interview
10 session between the defendant and Investigator
11 Mark Wiegert and Department of Justice Agent Tom
12 Fassbender. Defendant -- uh, defense counsel
13 contend that the defendant was so strongly urged
14 by one or both of them to make the call home to
15 his mother that the resulting call was
16 involuntary.

17 The defense objection went to the
18 substance of the defendant's conversation with
19 his mother as being the product of someone who is
20 harassed by police into making admissions against
21 his own interest by relaying to her some of the,
22 arguably, inculpatory information he supplied
23 Wiegert and Fassbender.

24 Defense counsel said the police conduct,
25 in urging the defendant to call home, was, in

1 effect, an effort to get him to repeat what he
2 told the police in a recorded telephone call to
3 his mother; thus, establishing additional
4 evidence to be used him.

5 In Counsel's words, quote, this is
6 tantamount to the creation, the coercive
7 creation, of evidence. And this comes from page
8 44, lines 2 to 5 of the hearing transcript.
9 Because Counsel believes it to be coercive,
10 Counsel argues that it was not voluntary and,
11 therefore, not admissible.

12 I have reviewed the three-plus hours of
13 the May 13 interview and find at least four
14 instances where one of the officers, usually
15 Investigator Wiegert, suggested to the
16 defender -- defendant that he should call his
17 mother.

18 In the first of these, the defendant is
19 told that it -- it would be a good idea to call
20 his mother and tell her what he told the police.
21 She has the right to know, or words to that
22 effect, are used, and she should hear it from you
23 rather than me. That was said by Investigator
24 Wiegert. He closed out that portion by saying,
25 it's up to you. Your decision. Just a

1 suggestion.

2 Later, he said, I hope you call your mom
3 before I do. And toward the end of the
4 interview, the defendant, again, is urged to call
5 his mother, then asked what he plans to do. Or
6 asked when he plans to do so. He replies,
7 tonight.

8 A few minutes later, he is admonished to
9 be honest with your mom. The only way she can
10 help you is if she knows the truth, end of quote.

11 The police advice to the defendant,
12 while arguably emphatic in at least one instance,
13 occupied no more than a few minutes of the
14 interview at best. The defendant was under no
15 obligation to make a call. He was not forced to
16 use the telephone.

17 The subsequent cone -- phone call from
18 the defendant to his mother was made from the
19 Sheboygan County Jail, and the conversational
20 portion was preceded by a warning that it was
21 being monitored and recorded. It fully complied
22 with the one party implied consent dictate of
23 Section 968.29 (3b) as ex -- as explicated in
24 **State v. Riley**, 287 Wis. 2d 244, at 248.

25 The defendant was fully aware that the

1 contents of his conversation were being recorded.
2 He was not compelled in any way to make an ad --
3 to make admissions against his interest to his
4 mother. What he said was his choice and his
5 alone.

6 The Court finds that neither the
7 quantity nor the quality of the police
8 solicitations constitute coercive behavior on
9 their part such that the defendant was deprived
10 of his ability to make a free and unconstrained
11 choice.

12 To suggest that because a police officer
13 says that he may call the defendant's mother to
14 talk to her if the defendant does not do so is
15 somehow tantamount to coercion, ignores a couple
16 of critical factors.

17 First, the call made by the defendant
18 was outside the physical presence of the
19 officers.

20 Secondly, the defendant chose what to
21 say without prompting by any member of the police
22 or any law enforcement authority.

23 And, thirdly, he was under no compulsion
24 to make that call or any call.

25 Lastly, the Court is unaware of any

1 case, or line of cases, that would countenance,
2 under these circumstances, the finding of
3 involuntary -- involuntariness for inculpatory
4 statements made by a defendant to a third party.

5 Uh, with that said, the -- the State's
6 motion in limine, regarding this particular item,
7 uh, is granted.

8 There is one other issue that has arisen
9 since that time, but grows out of the April 5
10 hearing, and that is, uh, at the April 5 hearing,
11 the Court ordered that the defense turn over to
12 the prosecution, uh, the raw material, the notes,
13 the factual bases on which Dr. Robert Gordon made
14 his evaluation of this defendant.

15 I received on -- on April 10 -- And --
16 and it was to be turned over by April 10. I
17 received, on April 10, from the special
18 prosecutor, uh, the fax indicating that it had
19 not yet been turned over and he had no idea at
20 that point when it was going to be turned over.
21 Uh, Mr. Kratz, do you now have that information?

22 ATTORNEY KRATZ: No.

23 THE COURT: Mr. Fremgen?

24 ATTORNEY FREMGEN: Judge, my office
25 spoke with Dr. Gordon. He was in L.A. yesterday

1 morning. Flew in yesterday night at 10 p.m. He
2 indicated he would hand-deliver that document
3 today to the hotel. Uh, I gave him the address
4 of the hotel.

5 THE COURT: All right. Uh, Mr. Kratz, do
6 you contend at this point that you are, uh, going to
7 be negatively affected by the procedure that
8 Mr. Fremgen proposes?

9 ATTORNEY KRATZ: Well, I -- I certainly
10 have been, uh, affected by it, Judge, in that I'm
11 less able to prepare for, um, the doctor's, um,
12 cross-examination or the preparation of our, uh,
13 own expert. Uh, I'm going to continue to ask the
14 Court to withhold ruling on any, uh, possible
15 sanctions until I look over the materials. I've
16 made arrangements to deliver them forthwith to
17 my, um, expert.

18 Frankly, Judge, the, um, remedies
19 available, whether it's exclusion of Dr. Gordon,
20 uh, or a continuance of the trial, both are, uh,
21 untenable. Uh, the former for the many impolitic
22 issues have been -- they may raise, especially
23 the Court's ruling as to this being the heart of
24 the defense and the Sixth Amendment, uh, issues,
25 uh, that may be involved, and the logistics of,

1 uh, continuing or, uh, moving this trial is, I
2 believe, also unreasonable.

3 So at this time, Your Honor, I'm simply
4 alerting the Court that I don't have the
5 materials yet. I would ask for, uh, the ability
6 to, um, revisit this issue should that become
7 necessary.

8 Uh, that all having been said, however,
9 uh, per the Court's urging, uh, I have made, uh,
10 other arrangements to speed up the process of the
11 review and the transport of that information.
12 And, so, uh, frankly, I think I'm going to be
13 able to get that done and I won't be asking
14 further, but I would respectfully ask the Court
15 to at least withhold a ruling.

16 THE COURT: All right. The record
17 should reflect that -- that Counsel -- and here
18 I'm referring to, uh, Mr. Kratz and -- and
19 Mr. Fremgen -- and I had a -- a phone conference,
20 uh, discussing this matter, uh, shortly after I
21 received the fax on -- on April 10.

22 Uh, Mr. Kratz said at that time, as he
23 is saying today, that, uh, while there certainly
24 are powers granted to the Court under 971.23,
25 specifically (7m), which allows the Court to

1 impose sanctions, there didn't appear at this
2 stage to be, one, uh, this wouldn't be the time
3 to impose sanctions, and, two, the -- the
4 remedies sanctions would be pretty -- or at least
5 sanctions under seven -- (7ma) would be pretty
6 draconian.

7 Uh, the Court said that it -- it --
8 based on the fact that Mr. Kratz had already
9 received, uh, probably over two hours worth of
10 direct examination testimony by DVD, and also had
11 a chance to -- I should say direct examination
12 testimony of Dr. Gordon -- and had also had an
13 opportunity to examine Dr. Gordon, that the Court
14 thought that Mr. Kratz had a fairly substantial
15 bank of information on which to draw, that the
16 Court would, uh, withhold making any ruling.

17 Uh, I'm going to adopt Mr. Kratz's
18 suggestion here and I won't make any ruling on it
19 at, uh -- at this point.

20 Anything else before we proceed to voir
21 dire, gentlemen?

22 ATTORNEY FREMGEN: I just --

23 ATTORNEY KRATZ: Is -- Go ahead.

24 ATTORNEY FREMGEN: I -- I just have two
25 issues, Judge. Um, I provided to the State

1 earlier, and I'll provide copy to the Court, I
2 amended our witness list to add one additional
3 witness. It would be about a five, ten-minute
4 witness. But I intended to withdraw Barb Tadych,
5 Barb Janda, um, from the list.

6 The State had indicated that because we
7 had her on our list, they didn't subpoena her.
8 We've agreed that we'll continue to keep her as a
9 witness, but the parties are agreeing to exclude
10 her from the sequestration order so she can
11 appear in the courtroom, except if there's an
12 issue that comes up with a witness in regards to
13 those phone calls from the jail to -- to -- to
14 the witness, then she would be asked to leave the
15 courtroom for that testimony. I think the State
16 agrees to that.

17 THE COURT: Would that, then, be any phone
18 call in which she's involved in or what?

19 ATTORNEY FREMGEN: I -- I think that
20 we'll get a heads-up, is my understanding, from
21 the State as to if we -- if they intend to call
22 this particular witness that may be discussing
23 this phone call. Uh, it won't be in the middle
24 of testimony, but we'll give her the notice that
25 she should leave the courtroom at that point.

1 THE COURT: Mr. Kratz, is that an accurate
2 summary of the agreement?

3 ATTORNEY KRATZ: It is, Judge, I had
4 gotten Mr. Fremgen's, uh, amended, uh, witness
5 list, uh, adding, uh, one short witness,
6 removing, uh, Ms. Tadych. And I understand that
7 the State has agreed to allow her to participate
8 and be in the trial unless, uh, we alert, uh, the
9 Court and Counsel that there is a problem.

10 The State also informed the defense
11 that, uh, there is a possible witness, a
12 Detective Todd Baldwin from the Marinette
13 Sheriff's Department, uh, who accompanied, uh,
14 another officer during an interview. Detective
15 Baldwin may or may not be called. Mr. Fremgen
16 was aware of, Detective, uh, Baldwin, and I
17 believe, uh, should he be called that he has no
18 objection to that amendment as well.

19 Lastly, the Court has asked that the,
20 uh, State, uh, prepare a subset of witnesses who
21 may have ties to the, uh, Madison or Dane County
22 area. We have, uh, done that and we are
23 prepared, once the jury selection process begins,
24 to identify those at the Court's urging.

25 THE COURT: All right. Anything more,

1 Mr. Fremgen?

2 ATTORNEY FREMGEN: There is one other,
3 and that's on the Motion in Limine, Series II, by
4 the State. Uh, we just want a clarification. I
5 believe that Mr. Fallon had indicated at the
6 motion hearing on April 5, under Section (1n), if
7 there were additional calls, they would provide
8 notice ahead of time. So I don't think there's
9 been a ruling that that's a blanket ruling to
10 allow admissibility of any other additional
11 calls, but the State would provide us notice and
12 that issue would be re-litigated.

13 THE COURT: Mr. Fallon, that was my
14 understanding.

15 ATTORNEY FALLON: That is correct.

16 THE COURT: All right.

17 ATTORNEY FREMGEN: And I don't believe
18 the Court ruled on Series II, sub-2, the phone
19 calls from the Avery phone calls?

20 THE COURT: No. As I recall, I withheld
21 making a ruling on that. I said that the context
22 was everything and before I heard how -- if and how
23 they were intended to be used, I couldn't make a
24 ruling.

25 ATTORNEY FREMGEN: That's fine.

1 THE COURT: All right.

2 ATTORNEY FALLON: And that's re -- that
3 was our request as well, because there are
4 multiple theories of admissibility and -- and
5 there are theories in which they would not be
6 admissible. It depends on the context in which
7 the issue comes up.

8 THE COURT: All right. Uh, Mr. Kratz, I
9 think I had asked you at the prior -- or prosecution
10 to draft an order, uh, on the -- the Series II
11 Motions in Limine. If I didn't -- I didn't?

12 ATTORNEY KRATZ: You didn't, but we
13 will, Judge.

14 THE COURT: All right. All right. You --

15 ATTORNEY FREMGEN: You had -- Judge, you
16 ordered that the -- the defense provide one in
17 regards to Dr. Gordon's order?

18 THE COURT: Right.

19 ATTORNEY FREMGEN: I did get the
20 transcript from the court reporter today and I'll
21 have that.

22 THE COURT: Which one -- which one of
23 you wants to provide an order, uh, discussing
24 this agreement about witnesses?

25 ATTORNEY FREMGEN: I'll -- I'll provide

1 that.

2 THE COURT: All right. Anything else,
3 then, before we move to voir dire?

4 ATTORNEY KRATZ: No.

5 THE COURT: All right. We're -- we're
6 going to be adjourned for a few moments. The jurors
7 are -- are going to be brought up here. I expected
8 there -- we're going to call 55 of them, so I expect
9 they're going to be filling most of these seats, so
10 we'll see.

11 And I'm just going to remind everybody
12 that during the -- during the voir dire, there'll
13 be no electronic recording of any of the
14 proceeding, uh, nor will there be any mention in
15 any reporting or reportage of any names of any
16 jurors. All right. We're adjourned.

17 (Recess had at 9:10 a.m.)

18 (Reconvened at 9:21 a.m.)

19 THE COURT: Good morning, ladies and
20 gentlemen. I'm Jerome Fox. I preside over the
21 third branch of the Manitowoc County Circuit Court.
22 We are here today to choose a sequestered jury for a
23 case entitled State of Wisconsin vs. Brendan Dassey.
24 It is a criminal case, and in a moment I'm going to
25 read to you from the charging document which is

1 called the Information. Before I do that, I want
2 you to understand the following:

3 That the Information is, as I told you,
4 a charging document and is nothing more than a
5 written form of the accusation or accusations
6 against the defendant charging him with the
7 commission of one or more criminal acts.

8 You are not to consider it as evidence
9 against the defendant in any way. It does not
10 raise any inference of guilt on the part of the
11 defendant.

12 In this case, the Information charges as
13 follows:

14 That Brendan Dassey, on or about Monday,
15 October 31, 2005, in the town of Gibson,
16 Manitowoc County, Wisconsin, as a party to a
17 crime, did cause the death of Teresa Halbach with
18 intent to kill that person contrary to Wisconsin
19 Statutes 90 -- 940.01 (1)(a), 939.50 (3)(a), and
20 939.05.

21 Count 2, that Brendan Dassey, on or
22 about Monday, October 31, 2005, in the town of
23 Gibson, Manitowoc County, Wisconsin, as a party
24 to a crime, did mutilate, disfigure or dismember
25 a corpse with intent to conceal the crime,

1 contrary to Section 940.11 (1), 939.50 (3)(f),
2 and 939.05.

3 Count 3, that Brendan Dassey, on or
4 about Monday, October 31, 2005, in the town of
5 Gibson, Manitowoc County, Wisconsin, as a party
6 to a crime, did have sexual intercourse with
7 Teresa Halbach without that person's consent by
8 use of a dangerous weapon, contrary to Section
9 940.225 (1)(b), 939.50 (3)(b), and 939.05,
10 Wisconsin Statutes.

11 To each of these charges that I've read,
12 the defendant entered a plea of not guilty, which
13 means a denial of each and every material
14 allegation in the charge.

15 Ladies and gentlemen, the law presumes
16 that each person charged with an offense is
17 innocent. The presumption of innocence stays
18 with the defendant throughout the trial and
19 prevails at the conclusion of the trial unless it
20 is overcome by evidence that satisfies the jury
21 that the defendant is proved guilty beyond a
22 reasonable doubt.

23 The defendant does not have to prove his
24 innocence. The burden of proving the defendant
25 guilty of every element of the crime charged is

1 upon the State, and before a jury can return a
2 verdict of guilty, the State must prove to the
3 satisfaction of that jury beyond a reasonable
4 doubt that the defendant is guilty.

5 At this time, I'm going to introduce to
6 you counsel that will be participating in this
7 case. First of all, representing the State is
8 Attorney Ken Kratz. Mr. Kratz?

9 ATTORNEY KRATZ: Good morning.

10 THE COURT: Attorney Tom Fallon.
11 Mr. Fallon?

12 ATTORNEY FALLON: Morning.

13 THE COURT: Attorney Norman Gahn. Mr.
14 Gahn.

15 ATTORNEY GAHN: Morning.

16 THE COURT: Uh, the defense is represented
17 by Attorney Mark Fremgen. Mr. Fremgen?

18 ATTORNEY FREMGEN: Good morning.

19 THE COURT: And Attorney Ray Edelstein.
20 With them at the counsel table is the defendant,
21 Brendan Dassey. Why don't you stand up, Mr. Dassey.
22 All right. Be seated.

23 Ladies and gentlemen, would you please
24 stand. The clerk is going to administer the
25 oath.

1 THE CLERK: Would you all raise your
2 right hands, please?

3 (Jurors sworn)

4 THE COURT: Be seated. Uh, ladies and
5 gentlemen, we are now going to conduct a process
6 known as voir dire. Voir dire, in French, means to
7 speak the truth, and it involves asking prospective
8 jurors questions so we can determine that we have a
9 fair and impartial jury to hear this case.

10 We're going to start by doing something
11 called individual voir dire. That is, a juror
12 will be called by name and will be escorted by
13 the jury clerk to a separate room where he'll --
14 he or she will be asked several questions after
15 which, and depending on the answers to the
16 question, the juror'll -- juror will be escorted
17 to the jury box, which is over here to the left,
18 or -- and be seated or will be excused. Then
19 another juror will be called, uh, and so on.

20 This is -- this is individual voir dire.
21 We will go through that same process until we
22 have seated 30 jurors in this jury box. At that
23 point, I will conduct what is known as general
24 voir dire. In doing that, I'm not trying to pry
25 into anyone's background. The whole point is to

1 assure that the people chosen as jurors represent
2 a fair and impartial jury.

3 After I'm done questioning at the
4 general voir dire, each side, the prosecution and
5 the defense will have an opportunity to ask some
6 questions. We will ultimately be selecting 16
7 jurors. Twelve jurors will comprise the final
8 panel with the remaining four acting as
9 alternates.

10 The determination of who will be
11 alternates, however, will not be made until the
12 close of the case. That is, after the case has
13 been entirely put before the jury.

14 Uh, Madam Clerk, would you give us a
15 couple of minutes so we can set up in the, uh,
16 next room, and then bring the -- the first juror
17 in.

18 I direct that the rest of you remain in
19 this courtroom. You may visit and talk among
20 you -- among each other, but please, remember,
21 don't talk anything about this case. All right.

22 (Recess had at 9:25 a.m.)

23 (Reconvened at 9:32 a.m.)

24 **VOIR DIRE EXAMINATION**

25 BY THE COURT:

1 Q Good morning, Ms. McDonald.

2 A Hello.

3 Q As I told you, we were going to do what is called

4 individual voir dire in this case, and I'm going

5 to start with the following question:

6 This is the State of Wisconsin vs.

7 Brendan Dassey and it's received a lot of

8 publicity. Have you heard anything about this

9 case or read anything about it?

10 A Yes, I have.

11 Q Uh, from what source did you learn whatever

12 information that you got?

13 A I think the *Wisconsin State Journal*.

14 Q Based on the information that you got from the

15 *Wisconsin State Journal*, have you formed any

16 opinion with respect to guilt or innocence in

17 this matter?

18 A I don't know. I do know that I -- I read an early

19 article, uh, that made me lean towards feeling that

20 there was guilt, but, uh, at this point, um,

21 depending on what the defense presents will

22 determine --

23 Q Would you --

24 A -- my final judgment.

25 Q Sorry. Uh, would you be able to set aside any

1 opinion -- and it sounds like this is a
2 provisional sort of opinion -- any opinion you
3 may have formed, set it aside and judge the case
4 only on the evidence that's presented in the
5 courtroom?

6 A I believe so.

7 Q Have you discussed this case with others?

8 A No.

9 Q Have you had a family member or a friend who was
10 killed either accidentally or otherwise?

11 A Oh, I -- Do you mean by another person?

12 Q Yes.

13 A No.

14 Q If you were called to serve as a juror in this
15 case, can you disregard anything you may have
16 read or heard in the media, or from any source,
17 and decide this case based solely on the evidence
18 produced in the -- in the courtroom and on the
19 instructions given you by a Judge?

20 A I believe I can.

21 Q Have you, or a close friend, or relative, ever
22 been the victim of or a witness to any kind of
23 crime, whether it was reported to law enforcement
24 authorities or not?

25 A I was mugged once in, uh, Madison about ten years ago

1 but --

2 Q Was that reported?

3 A Yes, it was.

4 Q Does that affect your feelings toward the police

5 one way or another?

6 A No. I tend to regard the police with, uh, respect.

7 Q Have you or a close friend ever been the victim

8 of a sexual assault?

9 A No.

10 Q Have you, a close friend, or family member, ever

11 been charged with a crime?

12 A No.

13 Q If selected as a juror in this case, you will be

14 instructed that Brendan Dassey is presumed

15 innocent and that he cannot be found guilty of

16 any offense, unless and until the State has

17 proven each element of each offense beyond a

18 reasonable doubt. If you were selected as a

19 juror in this case, would you be able to follow

20 that instruction in reaching a verdict?

21 A I believe so.

22 Q If selected as a juror in this case, you will

23 also be instructed that Brendan Dassey has a

24 constitutional right not to testify, and that if

25 he decides not to testify in the case, you cannot

1 hold that against him. Rather, you must base
2 your decision solely on the evidence introduced
3 at his -- at trial. If you were selected as a
4 juror in this case, would you be able to follow
5 that instruction?

6 A Yes.

7 Q All right. That, uh, concludes the individual
8 voir dire -- voir dire questions I have. Um --

9 ATTORNEY FALLON: I have none.

10 THE COURT: Well, uh, my understanding of
11 the process was that I was going to conduct it and,
12 uh, whatever questions you may have had, assuming
13 that, uh, the juror is seated, you -- you may do
14 that on general voir dire.

15 ATTORNEY FREMGEN: Actually, Judge, I
16 thought we would have moderate followup is what
17 the Court instructed us in chambers.

18 THE COURT: Did I say that?

19 ATTORNEY FREMGEN: Moderate followup, I
20 think was the quote.

21 THE COURT: Is that on the record
22 somewhere?

23 ATTORNEY FREMGEN: Not on the record, I
24 don't think.

25 ATTORNEY FALLON: You did allow us a

1 few follow-up --

2 THE COURT: All right.

3 ATTORNEY FALLON: -- questions depending
4 on the answers, and I have none for the record.

5 THE COURT: All right. Go ahead.

6 ATTORNEY FREMGEN: I just have a few.

7 THE COURT: For moderate followup.

8 ATTORNEY FREMGEN: I will be very
9 moderate.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FREMGEN:

12 Q Um, you'd indicated, um, when asked the question
13 about whether you formed an opinion, you said
14 you -- it was to -- leaning towards guilt is what
15 you said. Okay. But you also kind of --
16 depending upon what the defense presents.

17 A Uh-huh.

18 Q Do you believe that we need to prove innocence in
19 order to change your opinion?

20 A No. I -- it just depends on the, uh -- I had read a
21 story early on. Uh, I formed a partial opinion, or
22 an opinion, based on that story. I've come to, uh,
23 realize there may be an alternate explanation for
24 that.

25 Q You don't -- you understand, as the Judge said,

1 one of the instructions will be that the
2 defendant doesn't have to prove innocence?
3 A I understand that.
4 Q And doesn't even have to testify?
5 A I understand that.
6 Q Okay. One last question. Judge had asked you
7 whether your, uh, unfortunate incident of being
8 mugged in Madison impacted your feeling towards
9 police. Does it impact your feeling towards
10 persons charged with crimes?
11 A Person was never caught.
12 Q Okay.
13 A You know, so, uh, no, my -- No.
14 Q Okay. Thank you.
15 THE COURT: All right. Um, why don't we do
16 this: Would you just, uh -- well, we're going to
17 escort -- escort her to the jury box. All right.
18 Thank you.
19 JUROR McDONALD: Thank you.
20 (Wherein juror is escorted out.)
21 ATTORNEY FREMGEN: Judge, in regards to
22 the procedure then, if we have a challenge for
23 cause, should we do it now?
24 THE COURT: Yeah.
25 ATTORNEY FREMGEN: I don't have a

1 challenge for cause, but if -- if we did.

2 ATTORNEY FALLON: My thought was, and
3 Mr. Kratz and I were just commenting, we should
4 probably have them wait in this antechamber here,
5 have a quick discussion whether we think we need
6 another question or a for cause --

7 THE COURT: Right. And that's what I was
8 going to suggest with this one, but it didn't appear
9 as though anyone had --

10 ATTORNEY FALLON: This one was fine,
11 so --

12 THE COURT: Yeah. Okay. But we'll do
13 that. We'll just have, uh, the clerk or the
14 judicial assistant have her right in the antechamber
15 and then make a decision, yea or nay.

16 JUDICIAL ASSISTANT: This is Juror No.
17 8, Thomas Oakes.

18 THE COURT: Be seated, Mr. Oakes. Good
19 morning, again.

20 **VOIR DIRE EXAMINATION**

21 BY THE COURT:

22 Q Uh, this is the -- the case here is, as you know,
23 the State vs. Brendan Dassey and it's received a
24 lot of publicity. Have you heard anything about
25 the case?

1 A Um, I have.

2 Q Uh, from what source did you learn whatever it is

3 you heard?

4 A Um, mostly local news and some newspaper accounts.

5 Q Are you talking about Dane County accounts of

6 some sort?

7 A Yeah. *State*, uh -- *State Journal*.

8 Q Based on -- on what you have heard, have you

9 formed any opinion of guilt or innocence in the

10 matter?

11 A No.

12 Q Have you discussed this case with anyone?

13 A I have not. I mean, not more than just briefly

14 before I got -- found out that I was picked for the

15 jury pool.

16 Q Was this some sort of in-depth discussion --

17 A No.

18 Q -- or just simply in passing?

19 A Just in passing.

20 Q Uh, did, during the course of that discussion,

21 you express an opinion to whom -- whoever it was

22 you talked about as to the ilt or gen -- or the

23 guilt or innocence of this defendant?

24 A Did I?

25 Q Yeah.

1 A No.

2 Q Have you had a family member or friend who was
3 killed accidentally or otherwise?

4 A Um, yes. A cousin died in a car cash.

5 Q All right. Is there some -- any -- any criminal
6 prosecution --

7 A No.

8 Q -- as a result of that?

9 A No.

10 Q Have you, or a family member, or close friend,
11 ever killed anyone?

12 A No.

13 Q Uh, if you were called upon to serve as a juror
14 in this case, can you disregard anything you may
15 have heard or read in the media, or from any
16 source, and decide the case solely based on the
17 evidence that's presented in court?

18 A I believe so.

19 Q Have you, or a close friend, or relative, ever
20 been the victim of or a witness to any kind of
21 crime, whether it was reported to law enforcement
22 authorities or not?

23 A No.

24 Q All right. Ever had a friend, or -- or a
25 relative, close friend, who's been a victim of a

1 sexual assault?

2 A No.

3 Q Have you, a close friend, or a family member,
4 ever been charged with a crime?

5 A No.

6 Q If you would be selected as a juror in this case,
7 you would be instructed that Brendan Dassey is
8 presumed innocent and that he cannot be found
9 guilty of any offense, unless and until the State
10 has proven each element of each offense beyond a
11 reasonable doubt. If you were selected as a
12 juror, would you be able to follow that
13 instruction?

14 A I believe so.

15 Q If you were selected as a juror, you will also be
16 instructed that Mr. Dassey has a constitutional
17 right not to testify in this case, and that if he
18 decides not to testify, you cannot hold it
19 against him. Rather, you must base your decision
20 solely on the evidence introduced at trial. If
21 you were selected as a juror, would you be able
22 to follow that instruction?

23 A I believe so.

24 THE COURT: All right. Counsel?

25 ATTORNEY FALLON: One clarification.

1 VOIR DIRE EXAMINATION

2 BY ATTORNEY FALLON:

3 Q I believe, sir, you indicated you were somewhat
4 familiar with the case from reading the paper?

5 A A little bit, yeah.

6 Q Just so that we're clear, is it the case
7 involving Steven Avery that you're most familiar
8 with or the case -- or this case involving
9 Brendan Dassey?

10 A Mostly the Avery part. But they -- this was also
11 mentioned in those accounts, I guess, so a little
12 bit.

13 Q All right. In terms of if -- if it's possible
14 for you to somehow divide the two in your mind,
15 what you attribute to knowing about this case,
16 are you able to set that aside and decide this
17 case solely on what you hear presented in trial?

18 A Uh, yes, I believe so.

19 Q All right.

20 THE COURT: Mr. Fremgen?

21 VOIR DIRE EXAMINATION

22 BY ATTORNEY FREMGEN:

23 Q I wish to follow up on one question, Mr. Oakes.
24 In your questionnaire, you've indicated you have
25 been the victim of a hit and run?

1 A Well, yeah. I didn't know if that necessarily
2 counted as -- as a -- Yeah. I mean, yes, I -- I was.
3 I didn't know if that -- if that's what he meant
4 by --
5 Q And -- and I think you mentioned that once in
6 case, um, the person might have been, uh, charged
7 with an OWI?
8 A Right. Yeah. Yep.
9 Q Did -- did that have any impact on -- I mean, did
10 it upset you that your car was totaled by this
11 guy?
12 A Um, yeah. But, you know, I can't say that I didn't.
13 Q Would that impact on your feelings towards people
14 charged with crimes?
15 A I don't think so. I got over it pretty quick, so...
16 Q Thank you.

17 THE COURT: Any other questions?

18 ATTORNEY FALLON: No.

19 THE COURT: All right. Um, why don't you
20 just take him into the antechamber for a moment so
21 the lawyers can talk to -- Thank you, Mr. Oakes.

22 (Wherein juror is escorted out.)

23 THE COURT: Mr. Fallon?

24 ATTORNEY FALLON: No motion.

25 THE COURT: Mr. Fremgen?

1 ATTORNEY FREMGEN: No motion.

2 THE COURT: All right. He will then be
3 seated. Now, who's going to notify the -- Ah, good.
4 Thank you. This is Juror Heintz?

5 JUDICIAL ASSISTANT: This is Juror No.
6 3, Gregory Heintz.

7 VOIR DIRE EXAMINATION

8 BY THE COURT:

9 Q Morning, Mr. Heintz.

10 A Morning.

11 Q Uh, I'm going to ask you, uh, some questions,
12 and -- and counsel may have a follow-up question
13 or two. This, as you know, is the case entitled
14 the State vs. Brendan Dassey, and it's received a
15 lot of publicity.

16 A Uh-huh.

17 Q Have you heard anything about the case before you
18 got here to court today?

19 A Yes.

20 Q Uh, from what source did you hear whatever it is
21 that you heard?

22 A News. Uh, local news, internet.

23 Q Have you formed any opinions as a result of what
24 you heard about either the guilt or the innocence
25 of this defendant?

1 A Not a definite opinion but maybe some biases based on
2 what I've read and heard.

3 Q Well, let me ask you this, would you be able to
4 set, uh, those opinions, or as you refer to them,
5 those biases, aside and judge this case only on
6 the evidence presented in court?

7 A I'd like to think I could. Yes. It's in the back of
8 your mind what you know, so I don't know how that
9 would affect --

10 Q Have you discussed the case with anyone?

11 A Nothing more than I knew what case it was.

12 Q No in-depth discussion?

13 A No.

14 Q Just in passing if at all?

15 A Yeah, about. I would call it in passing.

16 Q Have you had a -- a family member or a friend who
17 was killed accidentally or otherwise?

18 A No.

19 Q Have you, a family member, or a close friend,
20 ever killed anyone?

21 A No.

22 Q Have you ever, uh, been the victim of a crime?

23 A Personally, no.

24 Q Uh, family member a victim of a crime?

25 A Um, parents. Uh, I had a credit card stolen, had

1 some com -- computer show up on their doorstep. So
2 fraud, I guess.

3 Q Uh, was it reported to law enforcement?

4 A Yes.

5 Q And was the -- was the matter resolved one way or
6 another?

7 A Um, nothing more happened.

8 Q Did whatever didn't happen or did happen, does it
9 affect your view of law enforcement in any way?

10 A No.

11 Q Uh, have you ever had a close friend or relative
12 who's been the victim of a sexual assault? I
13 think I noted on your -- your -- your
14 questionnaire that you may have had an
15 ex-brother-in-law?

16 A Yeah, ex-brother-in-law, daughter, not with my
17 sister, but with his first wife, who I've met, but
18 just briefly. So maybe a short answer is no,
19 although an acquaintance maybe.

20 Q Uh -- I just -- Has that left, in any way, any
21 lasting impression in your mind?

22 A Nothing. No. Nothing too detailed or in depth.

23 Q All right. Uh, have you, a close friend, or a
24 family member, ever been charged with a crime?

25 A No.

1 Q If you're selected as a juror in this case, you
2 will be instructed that Brendan Dassey is
3 presumed innocent and that he cannot be found
4 guilty of any offense, unless and until the State
5 has proven each element of each offense beyond a
6 reasonable doubt. If you were selected as a
7 juror, would you be able to follow that
8 instruction in reaching a verdict?

9 A I believe so. Um, as I mentioned in the one -- in
10 the questionnaire, having heard a little bit about
11 the trial, in the back of my mind, but I can follow
12 instructions and I believe I could.

13 Q Well, you're going to -- whatever you -- you
14 heard or you saw, or, uh, from the newspapers or
15 over the air, you're going to have to set aside;
16 do you understand that?

17 A I understand that, and I can say that I'm able to do
18 that, but that's in the back of my mind, so I'm -- I
19 don't know how much I can separate the two, I guess.

20 Q If you're selected as a juror, you will also be
21 instructed that Brendan Dassey has a
22 constitutional right not to testify in this
23 case --

24 A Um-hmm.

25 Q -- and that if he decides not to testify, you

1 cannot hold that against him. Rather, you must
2 base your decision solely on the evidence
3 introduced as trial?

4 A Right.

5 Q If you were selected as a juror, would you be
6 able to follow that instruction?

7 A Similar answer. I -- I believe I could follow that
8 instruction. I think it will be hard to disassociate
9 what I -- what I do know already though.

10 Q All right.

11 A And if that comes out in the trial, I guess it's a
12 non -- non-issue; right? What I answered in my
13 questionnaire?

14 Q Hmm.

15 ATTORNEY FALLON: Uh, Mr. Fallon?

16 ATTORNEY FALLON: Yes. Thank you.

17 VOIR DIRE EXAMINATION

18 BY ATTORNEY FALLON:

19 Q Um, good morning, Mr. Heintz.

20 A Morning.

21 Q Um, just so that we're clear, uh, the Court --
22 I -- I think in response to the ques -- first
23 question, and it kind of dovetails into your last
24 two responses, you say you were familiar with the
25 case from the news. I'm assuming you -- you are

1 familiar with the case involving this man,
2 Brendan Dassey --

3 A Um-hmm.

4 Q -- as opposed to the other gentleman, uh,
5 Mr. Avery?

6 A Um-hmm.

7 Q All right. So you have a clear --

8 THE COURT: Excuse me, just a second.
9 When you answer, could you --

10 JUROR HEINTZ: Yes.

11 THE COURT: -- could you say yes or no?

12 JUROR HEINTZ: Sorry.

13 THE COURT: Thank you.

14 Q (By Attorney Fallon) So in your mind, you -- you
15 can delineate the two? Differentiate the two?

16 A The two individuals?

17 Q Yes.

18 A Yes.

19 Q Okay. Good. Now, here's my question, you said
20 you didn't really have any opinions, but you had
21 some biases maybe in the back of your head. You
22 keep referring to something in the back of your
23 head that is giving you some concern. Can you
24 tell us -- can you articulate what that is?

25 A Um, can I ask a question? I'll --

1 Q Sure.

2 A With the questionnaires I filled out, has everybody
3 read those or --

4 Q Yes.

5 A Okay. I guess the -- the bias I have is that I
6 believe I read, or -- as I remember, it's been a
7 while ago now, that there was a confession that was
8 rendered at one point and then withdrawn. I guess
9 that's the main thing that I'm referring to.

10 Q All right. Um, yes, you're likely to hear some,
11 uh, evidence regarding a confession. Now, you
12 said if there's a -- What is the -- the part of
13 that confession, and then the supposed
14 recantation of that, what is it about that that
15 causes you some concern as being a -- from being
16 a juror in the case?

17 A Well, if -- if that confession comes out, or that a
18 confession was made comes out in the trial, I have
19 less concern because it becomes part of the evidence,
20 I guess. If that doesn't come out, and I know of
21 that, that I don't want that to influence my decision
22 based on the evidence that is presented.

23 Q All right. That's --

24 A That make sense?

25 Q Yes. That's exactly what we're concerned about.

1 So the -- the question the Judge has -- and that
2 goes back -- And -- And assuming, for the sake of
3 argument, the confession did not come in, would
4 you be able to, like any other information you
5 hear in the media, any other news coverage, would
6 you do your best to set that aside and listen
7 solely to the evidence which is presented in the
8 trial?

9 A I can listen solely to the evidence that's presented.

10 Q All right. And make your decision accordingly?

11 A I believe so.

12 Q Good enough. Thank you.

13 THE COURT: Mr. Fremgen, anything?

14 ATTORNEY FREMGEN: Please. Thank you.

15 VOIR DIRE EXAMINATION

16 BY ATTORNEY FREMGEN:

17 Q Mr. -- uh, Mr. Heintz, one of the questions the
18 Judge was asking you essentially implies can you
19 fairly and impartially make a decision about
20 Mr. Dassey, and you said yes?

21 A Um-hmm.

22 Q So that'd be correct?

23 A Yes.

24 Q Okay. Uh, Mr. Fallon was asking you about
25 your -- the bias, something in the back of your

1 mind that you're -- might be hard to forget, and
2 what you've mentioned was this confession and
3 recantation?

4 A Yes.

5 Q And you said, well, if the confession comes out,
6 that really won't be a big deal as far as your
7 opinion then?

8 A Because everybody then knows that.

9 Q So if the confession were -- if you knew right
10 now that the confession was going to be told to
11 you, what is your opinion then as to guilt or
12 innocence of Mr. Dassey?

13 ATTORNEY FALLON: I would object to
14 that --

15 THE COURT: Uh --

16 ATTORNEY FALLON: -- in the context in
17 which it's asked.

18 THE COURT: He -- that's -- that's, I
19 think, Counsel, unnecessarily confusing. Are --
20 are -- are you saying if only the confession appears
21 as evidence, what would you do?

22 ATTORNEY FREMGEN: I'm just asking
23 Mr. Heintz -- He mentioned that the confession
24 would solidify his opinion. I'd like to know
25 what the opinion is. That's all.

1 THE COURT: I -- I -- I don't know that I
2 heard that --

3 ATTORNEY FREMGEN: No.

4 THE COURT: -- term "solidify" opinion.

5 ATTORNEY FREMGEN: Well, Judge, I -- I'm
6 not saying that that's what Mr. Heintz said, but
7 I certainly believe the State was asking
8 Mr. Heintz about what it was that was, uh, the
9 bias in the back of his mind, and he indicated it
10 was this confession, and the comment, I believe,
11 was if the confession comes out, um, that
12 would --

13 THE COURT: And I'm not --

14 ATTORNEY FREMGEN: -- that would --

15 THE COURT: -- sure what you meant --
16 Sorry, I don't mean to be talk -- I'm not sure
17 what you mean by "the confession comes out." Do
18 you mean it comes out of the case or it's
19 introduced as part of the evidence?

20 ATTORNEY FREMGEN: Judge, I'm referring
21 to what Mr. Heintz said.

22 THE COURT: I -- I --

23 ATTORNEY FREMGEN: If you want, I'll ask
24 him more questions, but --

25 THE COURT: Why don't you just recast

1 your last question and --

2 ATTORNEY FREMGEN: That's fine.

3 THE COURT: -- see how it comes out.

4 Q (By Attorney Fremgen) Uh, Mr. Heintz, I'm sorry.
5 When you mean, "the confession comes out," if you
6 were told in trial by some witness or some
7 testimony about the confession, that's what you
8 mean by, "if it comes out?"

9 A Right.

10 Q So if testimony in trial were about this
11 confession you've read about, that would have an
12 impact on your opinion? Is that what you're
13 saying?

14 A Yes. I -- if it's presented in the trial, I don't
15 know how -- that's something that has to be
16 considered.

17 Q That's true. And I'm not saying you shouldn't
18 consider anything at trial, but your opinion now
19 is the -- the issue?

20 A Um-hmm.

21 Q You indicated you have bias somewhere in the back
22 of your mind that you're not -- you don't know if
23 you're able to separate that opinion from what
24 the Judge had explained to you? That -- I think
25 it's paraphrasing what you had -- how you

1 answered the Judge's question. And my question
2 is, what is that opinion that you can't separate?

3 ATTORNEY FALLON: Your Honor, again, I
4 don't mean to be obstructious (phonetic), but
5 maybe I'm wrong here, and you guys can tell me if
6 I'm wrong, but I got the impression that he was
7 troubled by information which was released in the
8 media, which may not be introduced in evidence,
9 and -- and whether he would be able to set it
10 aside. That seemed to be what the -- Mr., um,
11 Heintz was struggling with.

12 So -- and I think he answered that. At
13 least that's why -- how I understood the -- the
14 bias, the back of the mind, is what's out there
15 in the public domain that may not be in the
16 evidence that would be problematic.

17 THE COURT: Well, Mr. Heintz, is -- is that
18 an accurate characterization of how you feel?

19 JUROR HEINTZ: I agree with what that
20 gentleman just said. It -- it's hard to ignore
21 something you know already.

22 THE COURT: All right. With -- with --
23 with that said, Mr. Fremgen.

24 ATTORNEY FREMGEN: Thank you.

25 Q (BY Attorney Fremgen) So you were -- you could

1 be able to, knowing all that -- what you already
2 know from the publicity, you can indicate now
3 that Mr. Dassey is innocent?

4 A I don't know that. And that's why we're here, is it
5 not?

6 Q Well, one of the instructions the Judge will
7 explain to all jurors, not -- not just you,
8 Mr. Heintz, but --

9 A Um-hmm.

10 Q -- to all jurors, is that you must presume
11 Mr. Dassey is innocent. The Judge was describing
12 a summary of that just a couple minutes ago that
13 you must presume Mr. Dassey innocent --

14 A Um-hmm. I --

15 Q -- at all times --

16 A -- understand that.

17 Q -- during the trial. And that's my question.
18 Despite what you have heard, despite what is in
19 the recesses of your mind, you can presume
20 Mr. Dassey innocent right now?

21 A That -- Not sure how to answer that. That -- that --
22 I understand that is how you have to approach a
23 trial. That it's --

24 Q Can you --

25 A Yeah. I'm struggling with how to answer that.

1 Q Sure.

2 A Can you rephrase the question?

3 Q I'll -- I'll try. Um, despite what you might

4 have read in the *State Journal*, or on the

5 internet, or other global news --

6 A Um-hmm.

7 Q -- and what --

8 A Yes.

9 Q -- you've heard, and you mentioned that part of

10 it was the topic of confessions and recanting

11 confessions --

12 A Um-hmm.

13 Q -- despite all of that, right this minute, and

14 you'll be instructed throughout the trial you

15 must presume Mr. Dassey is innocent, can you

16 reconcile those two? Can you do that knowing

17 what you know?

18 A I would have difficulty doing that at this moment.

19 Q Okay. Thank you. There are no right or wrong

20 answers, just true answers. Thank you.

21 ATTORNEY FREMGEN: Nothing else, Judge.

22 THE COURT: All right. Uh, you,

23 Mr. Heintz, may accompany the judicial assistant.

24 Thank you.

25 (Wherein juror is escorted out.)

1 THE COURT: Mr. Fremgen?

2 ATTORNEY FREMGEN: Judge, I would ask
3 that this juror be struck for cause, um, just --
4 just based on his que -- answer to the question
5 that he'd have a difficult time presuming
6 Mr. Dassey innocent.

7 THE COURT: Any response, Mr., uh, Fallon?

8 ATTORNEY FALLON: It's a difficult
9 response because I'm not a hundred percent
10 convinced he needs to be excused for cause.
11 It -- it -- he would -- uh, admittedly, he was
12 equivocal, uh, but in answer to, uh, the last two
13 questions, you talked about the presumption of
14 innocence and, um, he -- he said, yeah, I believe
15 I can, and his whole concern was what's in the
16 public domain that may not be introduced in
17 evidence, and if -- and if the evidence comes in,
18 then he's -- he's more relaxed in consideration
19 of the evidence, and I think that has to be the
20 context in which you evaluate those responses.

21 I'm -- I'm not convinced that he must be
22 excused, um, because he can't presume, um, the --
23 the -- the presump -- can't follow the
24 presumption of innocence instruction.

25 THE COURT: I think the -- I think the

1 inability to -- to attach the presumption of
2 innocence at this point to the defendant is -- is
3 fatal to this, uh, gentleman's service on the jury.
4 Thus, I'm going to grant the, uh, for cause motion,
5 the strike motion for cause.

6 JUDICIAL ASSISTANT: This is Juror No.
7 31, Gordana Miletic.

8 THE COURT: Is it pronounced Miletic?

9 JUROR MILETIC: Yes. Well, it's
10 Miletic.

11 THE COURT: Okay.

12 JUROR MILETIC: But we do pronounce it
13 Miletic --

14 THE COURT: All right.

15 JUROR MILETIC: -- here.

16 THE COURT: All right. If you'd be
17 seated there, ma'am.

18 **VOIR DIRE EXAMINATION**

19 BY THE COURT:

20 Q Uh, this, as I mentioned in the courtroom, is
21 called individual voir dire, and I'm going to ask
22 you some questions. There may be some moderate
23 followup from the -- the attorneys.

24 This, as you know, is the case vs., uh,
25 Brendan Dassey, and it has received an awful lot

1 of publicity. Uh, have you heard anything about
2 this case in the media?

3 A Yes, I did.

4 Q From what source did you learn whatever it is
5 that you've heard?

6 A Well, first started with my son. Uh, a few years
7 ago, um, just before April, he was released. My son
8 volunteered for the, uh, Innocence Project, so I
9 became aware of the problem. And soon after in April
10 he was released, so I really got interested in the
11 case. So I have been following it -- following it
12 through *Wisconsin State Journal* and the local
13 television.

14 Q Have you, as a result of what you heard, formed
15 any opinions about the guilt or innocence of
16 Brendan Dassey?

17 A Not about him.

18 Q All right. Not about Brendan Dassey?

19 A No.

20 Q You're making a distinction here, and -- and you
21 haven't said this, but I'm going to surmise,
22 between Steven Avery and --

23 A You're right.

24 Q -- and Brendan Dassey? But you formed no opinion
25 one way or the another, guilt or innocence --

1 A No.

2 Q -- about Mr. Dassey? Have you discussed this
3 particular case with anyone else?

4 A No.

5 Q Have you had a family member or a friend who was
6 killed by acci -- by accident or otherwise?

7 A No.

8 Q Have you, a family member, or a close friend,
9 ever killed anyone accidentally or otherwise?

10 A No.

11 Q Have you -- if you are called to serve as a juror
12 in this case, can you disregard anything you may
13 have heard or read in the media, or from any
14 source, and decide this case based only on the
15 evidence presented in court?

16 A Um, I have a little bit of a concern. I have Ph.D.
17 in child development, and I'm just wondering if some
18 of my previous knowledge might affect my decision in
19 thinking -- making of this case.

20 I have also worked with visually
21 impaired for number of years, and they always
22 have, uh, other impairment, and we -- we have
23 discussed that.

24 Q Well, every juror brings to the jury box his or
25 her own -- his or her own personal knowledge.

1 What -- what I want to know is, uh, if you can
2 disregard anything that you may have read or
3 heard about this case in the media, or from any
4 other source, and decide the case based only on
5 the evidence produced in court?

6 A I believe so.

7 Q Have you, or any close friend, or relative, ever
8 been the victim of a crime, or witness to a
9 crime, whether it was reported to law enforcement
10 or not?

11 A No.

12 Q How about, uh -- I'll -- I'll be more specific.
13 How about a sexual assault? Have you, or a
14 friend, or a family member --

15 A No.

16 Q If you're selected as a juror in this case, you
17 will be instructed that Mr. Dassey is presumed
18 innocent and that he cannot be found guilty of
19 any offense, unless and until the State has
20 proven each element of each offense beyond a
21 reasonable doubt. If you were selected as a
22 juror in this case, would you be able to follow
23 this instruction in reaching a verdict?

24 A I believe so.

25 Q If you were selected as a juror, you will also be

1 instructed that Mr. Dassey has a constitutional
2 right not to testify in the case. And that if he
3 decides not to testify, you cannot hold that
4 against him. Rather, you must base your decision
5 solely on the evidence introduced at trial. If
6 you were selected as a juror, could you follow
7 that instruction?

8 A Yes, I can.

9 THE COURT: Mr. Fallon, any questions?

10 ATTORNEY FALLON: Just, uh, one.

11 VOIR DIRE EXAMINATION

12 BY ATTORNEY FALLON:

13 Q Um, good morning.

14 A Good morning.

15 Q Because your son volunteered for the Innocence
16 Project --

17 A Yes.

18 Q -- um, and based on the information that you
19 learned about, um, these cases from the media
20 and, perhaps, your son, I mean, did you have any
21 opinions on Mr. Avery that might affect your
22 evaluation of the evidence in this case?

23 A Well, um, I actually, um -- Mr. Avery said that he
24 was set up, and it was very hard for me to believe
25 that, uh, given the crime that was committed, I just

1 cannot imagine that anyone would want to hurt a
2 person so badly to get back at somebody else. So
3 when he was found guilty, it was not hard for me to
4 accept that.

5 Q All right. So -- then we're clear then, so
6 you're reasonably sure you won't let those
7 feelings or thoughts affect your deliberations on
8 the evidence that we introduce in this case?

9 A I believe so.

10 Q Okay. Thanks.

11 THE COURT: Mr. Fremgen, anything?

12 ATTORNEY FREMGEN: No. Thank you.

13 THE COURT: All right. Thanks much. You
14 may step down. You can wait in the anteroom for
15 just a second --

16 JUROR MILETIC: Okay.

17 THE COURT: -- with the -- the -- the,
18 uh, legal assistant.

19 (Wherein juror is escorted out.)

20 THE COURT: Mr. Fallon?

21 ATTORNEY FALLON: No motion.

22 ATTORNEY FREMGEN: No motion.

23 THE COURT: Court has no motion.

24 JUDICIAL ASSISTANT: Juror No. 33,
25 Timothy Hughes.

1 THE COURT: Hi, Mr. Hughes. Be seated.

2 JUROR HUGHES: Hi.

3 THE COURT: Good morning, again, to you.

4 JUROR HUGHES: Morning.

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q This is, I mentioned in the courtroom, would be
8 called individual voir dire, and I'm going to ask
9 you a series of questions. Counsel may have some
10 brief follow-up questions for you.

11 Uh, you're aware this is the case of
12 State vs. Brendan Dassey, and it's received a
13 substantial amount of publicity. Have you heard
14 anything about the case?

15 A Yes.

16 Q Uh, from what source did you hear whatever it is
17 you heard?

18 A Television.

19 Q As a result of what you heard, have you formed
20 any opinions regarding the guilt or innocence of
21 this defendant?

22 A Not much of a one.

23 Q Well, does not much of a --

24 A I --

25 Q -- one -- much of a one mean no or --

1 A I don't really know much about it, uh, to be honest.
2 Um, I know it's connected with the Steven Avery and
3 uh, uh, thing there, and I know more about that.
4 Q You understand, though, that this is a separate
5 case?
6 A Yes. Yeah. Uh --
7 Q Based on that fact, have you -- Based on the fact
8 that this is separate, you've heard something
9 about it, have you formed an opinion --
10 A No.
11 Q -- with respect to this --
12 A No.
13 Q You're going to have to -- she takes all of what
14 we --
15 A No.
16 Q -- say down. All right. Have you discussed this
17 case with anyone?
18 A Yes.
19 Q Uh, with whom?
20 A With my wife and my employer.
21 Q Uh, has -- has or have those discussions resulted
22 in you forming an opinion about this case?
23 A No.
24 Q Have you had a family member or friend who was
25 killed accidentally or otherwise?

1 A Yes. My brother was killed accidentally.

2 Q How long ago was that?

3 A 1980.

4 Q Uh, there was -- was there a criminal prosecution

5 as --

6 A No.

7 Q -- a result?

8 A No. It was an accident.

9 Q All right. What kind of accident?

10 A Uh, he was a garbage truck, um, driver, and he got

11 out of his truck, and it ran him over and crushed

12 him.

13 Q All right. Has that in any way, positive or

14 negative, affected your attitude toward law

15 enforcement authorities?

16 A No.

17 Q We -- we talked a little bit before about forming

18 opinions. Um, would you be able to set aside

19 anything that you -- you've heard or read about

20 this case and judge the case solely based on the

21 evidence presented in court?

22 A I believe I can.

23 Q Have you, or any close friend or relative, ever

24 been the victim of or witness to any kind of

25 crime, whether it was reported to law enforcement

1 or not?

2 A No.

3 Q Specifically, have you or a close friend or

4 relative been the victim of a sexual assault?

5 A No.

6 Q Have you, a close friend, or family member, ever

7 been charged with a crime?

8 A I was arrested, uh, a month ago for slapping my

9 daughter, and, uh, the charges were dropped.

10 Q All right. Other than that?

11 A That was it.

12 Q If you're selected as a juror in the case, in

13 this case, you will be instructed that Brendan

14 Dassey is presumed innocent and that he cannot be

15 found guilty of any offense, unless and until the

16 State has proven each element of each offense

17 beyond a reasonable doubt. If you were selected

18 as a juror in this case, would you be able to

19 follow that instruction?

20 A Yes.

21 Q There also will be, uh, another instruction that

22 says Mr. Dassey has a constitutional right not to

23 testify in this case, and that if he decides not

24 to testify, you cannot hold that against him.

25 Rather, you must base your decision solely on the

1 evidence introduced at trial. If you were
2 selected as a juror in this case, would you be
3 able to follow that instruction --

4 A Yes.

5 Q -- in reaching a verdict?

6 THE COURT: All right. Mr. Fallon, any
7 questions?

8 ATTORNEY FALLON: Uh, just two.

9 VOIR DIRE EXAMINATION

10 BY ATTORNEY FALLON:

11 Q Um, sir, you indicated you had some discussion
12 with your employer? Is that regarding, uh, your
13 ability to, um, maintain income if you were
14 selected as a juror in this case?

15 A Yes, we talked about --

16 Q All right. And will you suffer any financial
17 hardships, sir, if, in fact, you are selected and
18 are off of work for two weeks?

19 A No. The postal service will pay my, uh, salary and
20 I'd be reimbursed.

21 Q All right. So there's not a concern in that
22 regard?

23 A No.

24 Q Great. All right. Um, now, you said you were,
25 um, unfortunately, arrested a month ago for

1 slapping your daughter? Uh, how old was your
2 daughter?

3 A She's 17 now. She was almost 16 and --

4 Q Almost 16 --

5 A Uh, it happened in February. Uh, February 24 she
6 turned, uh -- so it's been a little bit more than a
7 month. Uh, I -- I remember, uh, three days after I
8 got out of jail -- I was in jail for 12 hours, and,
9 uh, three or four days after I got out she turned 17.

10 Q Okay. Now, um, I would imagine that wasn't
11 exactly, um, much fun at all?

12 A No.

13 Q And, um, do you feel that the, uh, case was
14 adequately, uh, investigated before your arrest?

15 A Yes. I admitted doing it, and they said it was
16 automatic, you can't strike a child, and I understand
17 that.

18 Q Okay. Um, so you think that you were, um,
19 handled, um, uh, appropriately and professionally
20 by the law enforcement officers?

21 A Yes. The police officers were nice, and the -- I
22 came to the county jail here, and, uh, I was with,
23 uh, seven other inmates in a holding cell, and it was
24 a little shocking, and, um, I'll never hit her again.
25 It -- it -- it deterred me that much, but...

1 Q Right. Okay. So, then, I guess my last
2 question, sir, is there anything about that
3 experience of -- of having been arrested and
4 spending a -- a short stay in the jail here, um,
5 is there anything about that that really makes
6 you wonder as to whether you can fairly evaluate
7 the testimony of -- of the officers involved in
8 this case or even be a juror in this case?

9 A I don't think so. I -- I don't think it -- it would
10 affect, um, being impartial.

11 Q Okay. Thank you.

12 THE COURT: Mr. Fremgen, any questions?

13 ATTORNEY FREMGEN: Just a few.

14 **VOIR DIRE EXAMINATION**

15 BY ATTORNEY FREMGEN:

16 Q Mr. Hughes, in regards to the incident with your
17 daughter, did you have to hire an attorney?

18 A No.

19 Q When you say it was dropped, did you have to meet
20 with the prosecutor's office?

21 A No. They just came to the jail cell, and they said,
22 you're free to go, and I called, uh, the district
23 attorney, and they said, uh, the charges were
24 dropped.

25 Q You'd indicated that, um, you don't -- you

1 haven't formed an opinion in regards to
2 Mr. Dassey; correct?

3 A Yeah. I said not much of a one. I -- I don't know
4 that much about it.

5 Q But you'd indicated that you have discussed this
6 case with your wife?

7 A Yes, I did.

8 Q Uh, did you guys discuss whether you felt he was
9 guilty or innocent?

10 A Not really. We were just, you know -- Did you hear
11 anything? Did you hear anything about the trial or
12 anything? And there hasn't been much on, really,
13 about it, so we didn't discuss much about it, no.

14 Q Was that more so after you received your summons
15 that you might have --

16 A Yeah. When we --

17 Q -- to --

18 A -- when I got the summons, we talked about it, and,
19 uh, I didn't even realize, uh, who Brendan was at
20 first. And then later on in the questionnaire it
21 dawned on me, you know, and then I did hear something
22 about it on TV, but not too much. Uh, just that the
23 trial was going be taking place and -- and they were
24 going to use, uh, people from Dane County.

25 Q I appreciate that. Thank you.

1 ATTORNEY FREMGEN: Nothing else.

2 THE COURT: All right. Thanks much. You
3 may step down. You can wait for just a moment in
4 the anteroom. The antechamber.

5 (Wherein juror is escorted out.)

6 ATTORNEY FALLON: No motion.

7 ATTORNEY FREMGEN: No objection.

8 THE COURT: All right. Uh, he can be
9 escorted to the jury box. Bring the next one in,
10 please.

11 JUDICIAL ASSISTANT: This is number 35,
12 Heather Rasmussen.

13 THE COURT: Morning, again, Ms. Rasmussen.

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q Uh, as I mentioned, this is individual voir dire.
17 I'm going to ask you some questions. Counsel may
18 have some brief follow-up questions for you.

19 A All right.

20 Q Uh, this is a case entitled State vs. Brendan
21 Dassey, and it has rece -- received, uh, a fair
22 amount of publicity. Have you heard anything
23 about this case?

24 A I don't watch the lo -- local news. I've heard
25 nothing.

1 Q So you know nothing about this case or the issues
2 in this case?

3 A Only what was told to me in the, uh, questionnaire I
4 filled out.

5 Q Beyond that, nothing?

6 A Nothing.

7 Q So, then, if I were to ask you if you formed an
8 opinion as to his guilt or innocence, your answer
9 would be --

10 A No.

11 Q Have you had a family member or a friend who was
12 killed accidentally or otherwise?

13 A Yes. My, uh, younger brother was killed in a car
14 accident in November of 2005.

15 Q All right. I think you said in your
16 questionnaire there was, uh -- or you implied
17 there was a charge for negligent homicide in
18 there; is that right?

19 A Yes, that's correct.

20 Q And at -- at this point the -- the defendant has
21 not yet come up for trial; is that right?

22 A Uh, the pretrial was done in December, but she has
23 not been up for trial yet.

24 Q Does that affect in any way, either positively or
25 negatively, the way, number one, you feel about

1 law enforcement?

2 A Not at all.

3 Q Uh, about defendants, generally? Does that
4 predispose you one way or another?

5 A I don't feel so. No. I -- I really haven't had much
6 interaction with it. I've been kind of out of
7 contact with my family since then.

8 Q Have you, a family member, or a close friend,
9 ever killed anyone accidentally or otherwise?

10 A No.

11 Q If you're selected as a -- a juror in this case,
12 you will be instructed that Brendan Dassey is
13 presumed innocent and that he cannot be found
14 guilty of any offense, unless and until the State
15 has proved each element of each offense beyond a
16 reasonable doubt. If you were selected as a
17 juror in this case, would you be able to follow
18 that instruction?

19 A Yes, I would.

20 Q Uh, likewise, if you were selected as a juror,
21 you're going to be instructed that Mr. Dassey has
22 a constitutional right not to testify, and that
23 if he does not testify at a trial, you cannot
24 hold that against him. But, rather, you're going
25 to have to base your decision solely on the

1 evidence that you hear at the trial. Could you
2 follow that instruction?

3 A Yes, I could.

4 THE COURT: Mr. Fallon?

5 ATTORNEY FALLON: No questions.

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FREMGEN:

8 Q Ms. Rasmussen, if I may, I just want to follow up
9 a little bit about the answer to your -- to the
10 question about your brother having been killed?

11 A Go ahead.

12 Q Are you -- were you close to your brother?

13 A Um, I was away at college, and I hadn't been close to
14 him growing up. We had just started spending a
15 little more time together, so we were getting closer,
16 but I wouldn't say I was horribly close to him.

17 Q Now, I would imagine this is -- was somewhat of a
18 horrific news to hear that your brother --

19 A It was not pleasant news to hear, no.

20 Q And I'm also going to imagine -- I hope I -- I
21 assume correctly, that you -- you certainly don't
22 have any strong, positive feelings for the person
23 that did this, either, to your brother?

24 A I know it was an accident, so I -- I -- I don't hold
25 it against her.

1 Q Would sitting in the trial where there is going
2 to be, obviously, testimony about a death,
3 homicide, um, would that trigger any of the
4 memories of your losing your brother?

5 A I've thought about that a lot leading up to this, and
6 I don't think that it would affect my ability to
7 serve as a juror.

8 THE COURT: Any further questions,
9 Mr. Fremgen?

10 ATTORNEY FREMGEN: No, Judge. Thank
11 you, very much.

12 THE COURT: All right. You may step down.
13 Thank you, very much.

14 (Wherein juror is escorted out.)

15 THE COURT: Mr. Fallon, any motion?

16 ATTORNEY FALLON: None.

17 THE COURT: Mr. Fremgen, any motion?

18 ATTORNEY FREMGEN: No, Judge.

19 THE COURT: All right. She will then be
20 seated in the box. Um, we'll try one more witness
21 before we -- or one more juror before we break.

22 ATTORNEY FREMGEN: This will be the only
23 one that -- right now, but there will be other
24 ones who make comments that -- like, for
25 instance...

1 (Wherein juror is brought in.)

2 ATTORNEY FREMGEN: I don't want to do it
3 in front of juror, that --

4 THE COURT: I understand. Is your comment
5 applicable to this --

6 ATTORNEY FREMGEN: Yes, this is --

7 THE COURT: All right. Uh, you're going to
8 be seated and you're going to arise. We're going
9 to -- why don't -- Would you take this juror,
10 please, to the anteroom?

11 JUDICIAL ASSISTANT: Sure.

12 THE COURT: Mr. Fremgen wants to make
13 a -- some discuss -- or have some discussion
14 outside the -- the presence.

15 (Wherein juror is escorted out.)

16 ATTORNEY FREMGEN: The reas --

17 THE COURT: Mr. Fremgen.

18 ATTORNEY FREMGEN: The reason I wanted
19 to bring this up, Judge, we -- we spoke in front
20 of, uh, Juror No. 30, Mr. Heintz, and I don't
21 think that was appropriate to be, basically,
22 arguing about, first, the witness in front of --
23 or the juror in front of us, and this witness
24 or -- excuse me -- juror, I believe, is going to
25 be kind of similar.

1 She made comments in her, uh, juror
2 questionnaire that, uh -- may think he's already
3 guilty, um, worrisome, and I certainly want to
4 delve into some of that. And rather than --
5 if -- if we're going to have any discussions
6 about the questions being inappropriate, I would
7 prefer we don't have that discussion in front of
8 the juror while we're sitting here questioning
9 the juror at the same time.

10 THE COURT: Well, uh, this process is
11 cumbersome at best. Uh, it could go on forever.
12 Obviously, if there -- if I thought there were
13 something that would have any kind of serious impact
14 on the -- on the juror, uh, in -- in the form of a
15 question or an objection or anything else, I
16 would -- I would excuse the juror to the anteroom.
17 But I -- with Mr. Heintz, I didn't feel that what
18 was said there was other than appropriate. I --
19 Mr. Fallon? Uh --

20 ATTORNEY FALLON: No. I -- I thought --
21 I thought it went all right. I -- I -- I -- I
22 didn't see -- from our perspective, everything
23 was okay, I think. But, I mean, looking at it
24 from another -- I was watching the juror as we
25 were having our discussion --

1 THE COURT: Right.

2 ATTORNEY FALLON: -- amongst the three
3 of us, and it didn't seem to cause him any, uh,
4 uncomfort or unrest. And that's my number one
5 consideration is that we don't somehow
6 contaminate him or make that juror uncomfortable,
7 and I -- I -- I was comfortable with what
8 happened.

9 THE COURT: Well, what it was, Mr. Fremgen,
10 and -- and perhaps I'm wrong about this -- really,
11 it went to the form of the question. Uh, I thought
12 at one point the -- the question was confusing or
13 compound, and -- and I -- I don't know that it -- it
14 -- it went to, uh -- to his answers.

15 So, obviously, if we -- we have
16 something that -- that is going to be
17 discomfoting to -- to a juror, we're -- we're
18 going to -- going to move it out. But, uh, voir
19 dire is -- is an effort to find out attitudes,
20 and you have an opportunity, as does the State.
21 So --

22 ATTORNEY FREMGEN: I -- I understand
23 that. I don't have a problem with that. I don't
24 think that voir dire is the appropriate place for
25 the juror to see the attitudes of the counsel and

1 the Court, how they interact, though,
2 necessarily.

3 THE COURT: I'll keep that in mind. All
4 right. Uh, next juror.

5 JUDICIAL ASSISTANT: Juror No. 43,
6 Rachel Tedder.

7 THE COURT: Good morning, again,
8 Ms. Tedder. Why don't you be seated there?

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q This is -- I mentioned to you, as well as the
12 others in the courtroom, is individual voir dire.
13 I'm going to be asking you a series of questions.
14 Counsel may have some follow-up questions.

15 Uh, this is, of course, the State vs.
16 Brendan Dassey. It's received a fair amount of
17 publicity. Have you heard anything about this
18 case?

19 A I have. Yes.

20 Q From what source did you learn whatever it is you
21 heard?

22 A Um, the television when -- when it first happened.
23 And, um, I'm on the internet every day, so I do, you
24 know, read the news. I have heard about the case.

25 Q All right. Um, based on what you've -- you've

1 heard, have you formed any opinions about the
2 guilt or innocence of this defendant?

3 A Yes, I feel like I have to a certain degree. Um --

4 Q We'll get to -- we'll get to that a little bit
5 more in a moment, but would you be able to set
6 those opinions aside if you were on the jury and
7 judge this case solely on the evidence as it's
8 presented in court?

9 A Yes.

10 Q All right. Have you discussed this case with
11 anyone?

12 A Yes. I mean, just whatever's on TV and reading about
13 it at the time, yes, I've discussed it with others.

14 Q Are these discussions in passing or are they
15 in-depth discussions?

16 A Not in depth. In passing.

17 Q Based on those discussions, did you form an
18 opinion regarding the guilt or innocence of the
19 defendant?

20 A Um, not completely, no.

21 Q Well, whatever -- whatever opinion you had --
22 Well, and I -- and I'll ask you, what -- do you
23 have some provisional, some preliminary opinion
24 that you've formed?

25 A Um, yes. I feel -- I feel in my heart that maybe I

1 have. I -- you know, I have given it some thought,
2 and whatever I've learned about it, I guess I believe
3 I have a, you know -- a feeling about it.

4 Q And that feeling is?

5 A Guilty.

6 Q That -- that he may be guilty?

7 A Yes.

8 Q And you've described it as a feeling. I've
9 described it as an opinion. Would you be able to
10 set that aside -- again, I'm going to ask you
11 this -- and judge the case solely on the evidence
12 that's presented in the court and the
13 instructions the Court gives you?

14 A Yes.

15 Q Have you had a family member or a friend who was
16 killed accidentally or otherwise?

17 A No.

18 Q Have you -- have you, a family member, or a close
19 friend, ever killed anyone accidentally or
20 otherwise?

21 A No.

22 Q If you're called upon to serve as a juror, can
23 you disregard anything that you've heard, or read
24 in the media, or on the internet, or from any
25 other source, and decide the case solely based on

1 the evidence?

2 A I can certainly try, yes, absolutely.

3 Q Well, try is one thing. Can you do it? Do you

4 believe in your heart --

5 A Yes, I believe --

6 Q -- you can?

7 A -- in my heart I can.

8 Q Have you, or any close friend, or relative, ever

9 been the victim of, a witness to, any kind of

10 crime, whether it was reported to law enforcement

11 or not?

12 A No.

13 Q Specifically, have you or a close friend ever

14 been a victim of a sexual assault?

15 A No.

16 Q If you were selected as a juror in this case, you

17 would be instructed that Brendan Dassey is

18 presumed innocent and that he cannot be found

19 guilty of any offense, unless and until the State

20 has proven each element of each offense beyond a

21 reasonable doubt. If you were selected as a

22 juror, would you be able to follow that

23 instruction?

24 A Yes.

25 Q Uh, likewise, if you were selected as a juror,

1 you would be instructed that Brendan Dassey has a
2 constitutional right not to testify in this case,
3 and that if he decides not to testify, you can't
4 hold that against him. Rather, you must base
5 your decision solely on the evidence that's
6 presented in court. Could you follow that
7 instruction as well?

8 A Yes.

9 THE COURT: Counsel?

10 ATTORNEY FALLON: Uh --

11 THE COURT: Mr. Fallon?

12 ATTORNEY FALLON: At this point I do
13 not. I will wait for Counsel. Uh, I don't have
14 any questions right now. I'm accepting the
15 Court's colloquy.

16 THE COURT: We're doing rebuttal here?

17 ATTORNEY FALLON: I'm -- I'm
18 anticipating an argument, so...

19 THE COURT: Go ahead. Mr. Fremgen.

20 VOIR DIRE EXAMINATION

21 BY ATTORNEY FREMGEN:

22 Q Ms., uh, Tedder is it?

23 A Um-hmm.

24 Q You'd indicated that in your heart you feel that
25 he is guilty, but you can set that aside if

1 that's the instruction of the Court; correct?

2 A Yes.

3 Q Do you believe Mr. Dassey, right now, to be

4 innocent?

5 A It hasn't been proven. No. No, it -- I have -- the

6 evidence hasn't been presented to me. Yet, if it

7 were presented, I'd try to make a decision from the

8 evidence.

9 Q Do you believe that it would be necessary to

10 prove he's innocent or just prove that he's

11 guilty?

12 A That he's innocent?

13 Q Now, one of the instructions the Judge will give

14 to all of the jurors was -- I think summarizing

15 here, was that presumption of innocence and

16 burden of proof mean that he doesn't have to

17 prove he's innocent. Do you understand that?

18 A Yes.

19 Q But as a juror you think that that should be --

20 that he should have to prove that?

21 A Um, I'm sorry, my mind is get jumbled. Um --

22 Q I can rephrase.

23 A Yes, would you rephrase the question?

24 Q Let me ask you it a different way. Maybe --

25 A Okay.

1 Q -- it will be a little easier. You indicated
2 that you can follow the instruction of the Court,
3 and one of the instructions is you have to
4 presume that Brendan is innocent?

5 A Um-hmm.

6 Q Another instruction later would be that the
7 State, the prosecutors, are the only ones that
8 have to prove anything. They have to prove --
9 they would have to prove guilt beyond a
10 reasonable doubt. That's the instruction.

11 A Um-hmm.

12 Q There's no instruction that says the defendant
13 has to prove he's innocent. Is that okay with
14 you? Can you --

15 A Yes.

16 Q Okay. You can set aside your feelings in your
17 heart that he's guilty and -- and follow those
18 instructions?

19 A Yes.

20 Q Okay. Um, and -- and may -- I might have missed
21 your answer. The Judge had asked about trying to
22 set aside the publicity, the things you've read
23 already? You said you would try?

24 A Yes.

25 Q Okay. And -- and you may have clarified that --

1 that you will do that? You're not going to just
2 try? You will?

3 A Yes.

4 Q I'm sorry.

5 A That's okay.

6 Q I might have missed your answer on that. One
7 last question, and kind of involves, again, the
8 issue about presumption of innocence. Do you
9 feel that, for you as a juror, it would be
10 necessary for Brendan to testify and say he
11 didn't do it?

12 A Um, no.

13 ATTORNEY FREMGEN: I have nothing else.

14 THE COURT: All right. Uh, you may take
15 her to the anteroom.

16 (Wherein juror is escorted out.)

17 THE COURT: Any motions, gentlemen?

18 ATTORNEY FALLON: There's no motion from
19 the State.

20 THE COURT: Mr. Fremgen?

21 ATTORNEY FREMGEN: I -- Judge, I -- I
22 think it's a real close call, but I still would
23 ask that the Court consider striking her for
24 cause for the concerns that she has, or -- or her
25 comments of being -- feeling in her -- her heart

1 that the defendant is guilty, uh, despite the
2 comment to the Court that she could set aside her
3 feelings and follow the law as instructed by the
4 Court.

5 I still think that it draws upon the
6 issue, uh, that the defendant is entitled to an
7 impartial juror who's unequivocal in their
8 ability to be fair, and I think that implies that
9 they're unequivocal in their ability to set
10 aside, or not to have preconceived feelings. And
11 she's saying, I have this feeling in my heart
12 that he's guilty, yet I'll set it aside. I'm not
13 so sure I'm convinced that she can do so.

14 THE COURT: Well, people come with
15 opinions. We attempt to find a jury that,
16 ultimately, is impartial. I take this juror at her
17 word that she could set aside whatever it is that
18 she may have felt. Thus, I'll deny your motion and
19 she can be seated in the box. We'll wait -- we'll
20 take about a ten-minute recess.

21 (Recess had at 10:39 a.m.)

22 (Reconvened at 10:55 a.m.)

23 THE COURT: All right. We'll go back on
24 the record. Bring the next juror in, please?

25 JUDICIAL ASSISTANT: This is Juror No.

1 44, Leah Shea.

2 THE COURT: Hi, Ms. Shea. Be seated.

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q As you may recall my telling you a few moments
6 ago, this is called individual voir dire. I'm
7 going to ask you a couple of questions and then
8 counsel may or may not have some follow-up
9 questions to ask you.

10 This case, as you're aware, is State vs.
11 Brendan Dassey. It's received a substantial
12 amount of publicity. Have you heard or read
13 anything about this case before coming here
14 today?

15 A Yes.

16 Q And from what source did you learn whatever it is
17 you learned?

18 A Um, I've read it in the newspaper, mostly the
19 *Wisconsin State Journal*, and I've seen it on TV.

20 Q All right. Based on what you've read and you've
21 heard, have you formed any opinion as to this
22 defendant's guilt or innocence?

23 A No.

24 Q Have you discussed this case with anyone else?

25 A Um, not since getting my letter, but before that,

1 with my family, I guess.

2 Q All right. Were these lengthy discussions, in
3 depth --

4 A No.

5 Q -- or just --

6 A No.

7 Q -- just in passing?

8 A Just in passing.

9 Q Uh, our court reporter is taking down what you
10 and I say, so --

11 A Okay.

12 Q -- just don't try to anticipate the ending, just
13 wait until I do, okay?

14 A Okay.

15 Q Have you ever had a family member or a friend who
16 was killed accidentally or otherwise?

17 A No.

18 Q Have you, a family member, or a close friend,
19 ever killed anyone accidentally or otherwise?

20 A No.

21 Q If you're called upon to serve as a juror in this
22 case, can you disregard anything you may have
23 read in the media or heard in the media about
24 this, from any source, and decide the case based
25 solely on the evidence in court?

1 A Yes.

2 Q Have you, or any close friend, or relative, ever

3 been the victim of or a witness to any kind of

4 crime, whether it was reported to the police or

5 not?

6 A I had one friend who was sexually assaulted.

7 Q All right. That would have been my next

8 question.

9 A Oh.

10 Q You had a --

11 A Sorry.

12 Q -- friend who was sexually assaulted?

13 A Um-hmm.

14 Q Yes?

15 A Yes.

16 Q We have to say, yes, rather than um-hmm or

17 uh-huh.

18 A Okay.

19 Q All right. How long ago did this occur?

20 A A year.

21 Q Does that have any impact on the way you think

22 about the police?

23 A No.

24 Q Uh, does it have any -- any impact on anything?

25 A No. I just heard about it through another friend. I

1 wasn't with her at the time and she didn't really
2 discuss it with me.

3 Q So -- so as for details, you know very few, if
4 any?

5 A Very few.

6 Q All right. Have you, a close friend, or a family
7 member, ever been charged with a crime?

8 A No.

9 Q If you're selected as a juror in this case, you
10 will be instructed that Mr. Dassey's presumed
11 innocent and that he cannot be found guilty of
12 any offense, unless and until the State has
13 proven each element of each offense beyond a
14 reasonable doubt. Could you follow that
15 instruction?

16 A Yes.

17 Q Uh, likewise, you'll be instructed that under the
18 U. S. Constitution Mr. Dassey has a right not to
19 testify in this case, and that if he decides not
20 to testify, you can't hold that against him.
21 But, rather, you're going to have to find, based
22 only on the evidence that's presented in the
23 case, whether or not -- or what your verdict is.
24 Can you follow that instruction?

25 A Yes.

1 THE COURT: Mr. Fallon?

2 ATTORNEY FALLON: No questions.

3 THE COURT: Mr. Fremgen?

4 ATTORNEY FREMGEN: I just had one
5 question.

6 VOIR DIRE EXAMINATION

7 BY ATTORNEY FREMGEN:

8 Q You're a student at the UW-Madison?

9 A Yes.

10 Q Are you -- this going to be a problem for your
11 classes and tests if you're away from your
12 classes for two weeks? Upwards of two weeks or
13 more?

14 A Um, I spoke to all my professors, and they're willing
15 to work with me, but I guess I would preferably
16 rather not miss it.

17 Q What -- what -- when are your finals?

18 A They're May 13.

19 Q Okay.

20 A That -- that week.

21 Q Okay.

22 ATTORNEY FREMGEN: I have nothing else.

23 THE COURT: All right. You may step down.
24 Thank you.

25 JUROR SHEA: Okay.

1 THE COURT: You're going to wait for just a
2 moment in the antechamber here --

3 JUROR SHEA: Okay.

4 THE COURT: -- with the -- with the
5 judicial assistant.

6 (Wherein juror is escorted out.)

7 THE COURT: Motions from either side?

8 ATTORNEY FALLON: None.

9 ATTORNEY FREMGEN: No.

10 THE COURT: All right. She will be seated
11 in the jury box. The next juror, please?

12 JUDICIAL ASSISTANT: Juror No. 47, Layne
13 Close.

14 THE COURT: Hi, Mr. Close. Would you be
15 seated there, please?

16 JUROR CLOSE: Thank you.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q Uh, Mr. Close, as you heard me say, this was --
20 this is called individual voir dire. I'm going
21 to ask you some questions. After I'm done,
22 Counsel may or may not have a few brief questions
23 to follow up on what I ask you.

24 Uh, this is the case, as you know, State
25 vs. Brendan Dassey, and it's received a

1 substantial amount of publicity. Have you heard
2 anything about this case?

3 A I've read multiple things in the newspaper and seen
4 things on television about the case as it was
5 breaking, so to speak.

6 Q All right. Based on what you -- you've heard or
7 read or seen, have you formed any opinions about
8 the guilt or innocence of Mr. Dassey?

9 A Um, initially, I had because one of the first things
10 that had come out within it was that there was a
11 confession involved, and at that point, obviously,
12 you allow that to set in your mind as a point of --
13 of -- of ending, so to speak, because it's a
14 confession.

15 Um, I had not at any point heard, um,
16 about any, um, thing being rescinded, although I
17 had later, on television, heard that that had
18 been taken place. So then that changes your
19 whole perspective of the things, and then how do
20 you think about that in your own mind, not
21 knowing that you're ever going to be involved in
22 this, but simply as an interested person hearing
23 a news report.

24 Q Let me ask you this: Would you be able to set
25 aside any opinion you might have, and, if you

1 were a juror, judge this case based only on the
2 evidence presented in court?

3 A That's something, since I got the information from
4 your office, I've been wrestling with. Because you
5 make these decisions, uh, having heard things
6 earlier, and then can you go back objectively in your
7 own mind and remove what you previously thought, um,
8 and set yourself up, basically, as a blank slate.
9 And I think that I would be intelligent enough to be
10 able to do that, but I'm not sure that I have totally
11 able to erase anything from my mind that I may have
12 previously set up as something I've heard.

13 So to answer your question, I guess I'm
14 not really sure. Um, I'd like to think I could,
15 but I don't know.

16 Q Have you discussed this case with others?

17 A Um, initially, yes. Um, when I was, uh, you know,
18 simply a person reading the news in the newspapers
19 and seen things, obviously, it -- it come -- becomes
20 a point of conversation with co-workers, with family
21 members.

22 Um, since I got, uh, the information
23 that I would possibly be a juror involved in this
24 case, I have not said anything.

25 In fact, um, in trying to inform my

1 employer of the fact that I may be gone for
2 awhile, having been called for jury duty,
3 obviously, they want to know, well, do you know
4 what you're involved with, and I have told them I
5 can't -- have been informed that, no, I can't
6 discuss even what case it is. So, uh, no, since
7 that point I have not discussed it with anyone,
8 but prior to that I did, yes.

9 Q Based on those prior discussions, did you form
10 any opinion relating to the guilt or innocence of
11 this defendant?

12 A Initially, I did, because, obviously, I'd heard that
13 there was going to be a -- testimony given in the
14 previous trial regarding, um, information from that
15 confession, which is what we had heard, initially, in
16 new -- in news reports. So at that point, yeah, I
17 had made it -- a -- an opinion about that.

18 Um, and beyond that point, you know,
19 then you -- you hear reports about, okay, there's
20 been a -- a recanting of that, and then you have
21 to rethink, now, how do I feel about that? And,
22 generally, you don't think very deeply about it,
23 because you -- you don't think you're going to be
24 involved in it.

25 Um, at the point you find that you're

1 going to be involved in it, then you have to go
2 back and revisit everything. Okay, now, how do I
3 feel about that now? And, um, again, it's been
4 somewhat emotional to try and think, okay, can I
5 be objective about this? Can I not be? I've
6 already heard things, and you really wrestle
7 with, okay, how objective am I, really?

8 And, um, I think that -- like I say, I
9 think that I -- I'd like to think that I'm able
10 to, but in the back of your mind, you still got
11 those -- those things that, okay, I made a
12 decision based on information previously. Can I
13 throw all that out? And can I do that? And,
14 again, I'd like to think I can, but I could not
15 tell you, sitting here now, absolutely, that I am
16 absolutely positive, one hundred percent, that I
17 can say I can completely ignore everything
18 previously, and simply base things on what I'm
19 going to hear now as a blank slate.

20 Q Just a point of clarification. You mentioned
21 prior tri -- trial. You're talking about State
22 vs. Steven Avery?

23 A Correct.

24 Q All right. Have you had a family member or
25 friend who was killed accidentally or otherwise?

1 A No.

2 Q Have you, a family member, or close friend, ever
3 killed anyone accidentally or otherwise?

4 A Not that I'm aware of.

5 Q Uh, I'll ask you, uh, sort of a followup to
6 something we did earlier, something we talked
7 about earlier, if you're called to serve as a
8 juror in this case, can you disregard anything
9 you may have read or heard in the media from any
10 source and decide this case based solely on the
11 evidence that is presented in the court and the
12 instructions that the Judge gives you regarding
13 the law?

14 A I would like to think I can.

15 Q All right. Uh, have you, or any close friend, or
16 relative, ever been the victim of or witness to
17 any kind of crime, whether it was reported to law
18 enforcement authorities or not?

19 A Yes.

20 Q Uh, specifically?

21 A Um, some of the things I've put in the questionnaire,
22 my wife was, uh, raped as a -- as a, uh, young woman
23 working in a work environment. My sister, uh, was
24 raped when she was in grade school. Um, I guess --
25 well, it was -- it was sexual contact, but it was,

1 uh, unwanted. None of those were reported.

2 Um, I think those are the major ones
3 that might relate to this.

4 Q But these were not reported and prosecuted?

5 A No.

6 Q I -- does that -- do -- do these incidents that
7 you've just described affect, in any way, your
8 attitude toward allegations of sexual crimes?

9 A I don't think so.

10 Q You would treat them based on evidence that you
11 saw in a particular case?

12 A Yeah. I mean, each case is an individual sit -- set
13 of situation. It shouldn't, uh -- you can't make
14 inferences about one person's behavior based on
15 another one's.

16 Q Have you, a -- a close friend, or a family
17 member, ever been charged with a crime?

18 A Yes.

19 Q And that is?

20 A Um, a number of years ago I, uh, pleaded no contest
21 to shoplifting.

22 Q Beyond that? I -- I --

23 A Felony-type charges you're referring to?

24 Q Well, you're -- what you're talking about is
25 retail theft. I'm not sure whether it was

1 charged as a municipal ordinance or under a --

2 A It was.

3 Q Okay. So that really isn't a crime.

4 A Okay.

5 Q Uh, anything other than that?

6 A Not that I'm aware of, no.

7 Q If you're selected as a juror in this case, you

8 will be instructed that Brendan Dassey is

9 presumed innocent and that he cannot be found

10 guilty of any offense, unless and until the State

11 has proven each element of each offense beyond a

12 reasonable doubt. If you were selected as a

13 juror in this case, would you be able to follow

14 that instruction?

15 A Yes. I think so.

16 Q Likewise, if you were selected as a juror, you

17 understand that Mr. Dassey has a -- a right under

18 the United States Constitution not to testify if

19 he so chooses, and that if he decides not to

20 testify, you cannot hold that against him?

21 Rather, you must base your decision solely on the

22 evidence introduced at trial? If you were

23 selected as a juror, would you be able to follow

24 that instruction in reaching a verdict?

25 A I think so.

1 Q All right.

2 THE COURT: Uh, Mr. Fallon?

3 ATTORNEY FALLON: No questions.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: Just a few, Judge.

6 **VOIR DIRE EXAMINATION**

7 BY MR. FREMGEN:

8 Q Uh, Mr. -- Mr. Close, uh -- and it may be just
9 more semantics -- when asked whether you could
10 follow the instructions about presumption of
11 innocence, and, uh, the fact that the defendant
12 need not testify, you said, you think so. Is
13 there something that you think, possibly, I may
14 not be able to follow that instruction?

15 A Um, to the best of -- of my ability, I would like to
16 think that I can be objective about given the
17 situation and the criteria in which we are to judge
18 this. Um, until you're in that situation, though,
19 you don't know how you will react exactly.

20 So I'm allowing that bit of wiggle-room,
21 so to speak, to say that I cannot predict exactly
22 how I will react to that, but I'd like to think
23 that I'm obj -- objective enough to be able to
24 follow the criteria given as far as judgment on
25 the evidence presented.

1 Q So right now you can say Mr. Dassey's not --
2 Mr. Dassey is innocent?

3 A That is the basis of our whole legal system.

4 Q Okay. And -- and you're okay with that?

5 A I'm okay with that.

6 Q When you were asked whether you could set aside
7 some of the prior opinions that you formulated
8 due to, in part, the publicity that you've heard
9 or read, you said, I think I can, I'm not sure?

10 A Um-hmm.

11 Q Is -- is there something about the -- the extent
12 of the publicity or -- or what the publicity was
13 that indicates to you that maybe you can't put
14 this aside? I -- I want to just find out some
15 more about that in your mind?

16 A Again, it's -- you -- you form opinions when you read
17 anything in the newspaper, see news reports about it,
18 assuming that what you are seeing is objectively
19 reported news.

20 Um, obviously, you don't think you're
21 going to be involved with it. You're just an
22 outside observer, and, thus, you're seeing these
23 things come into your mind. You form opinions on
24 anything and everything. Um, and whether I can
25 take and remove all of those previous thoughts

1 that I've had about the opinions that I've made,
2 throw them aside, and -- and look at things
3 objectively, totally, I'd like -- like I say, I
4 think that I can do that, but I can't say
5 absolutely for certain, when I'm in a situation
6 such as this, that I can totally eliminate
7 everything that I've previously had as an
8 experience. Um --

9 Q I don't -- I don't want you to totally ignore
10 your prior experiences, because that you -- all
11 jurors should bring their prior experiences. But
12 in --

13 A Yes.

14 Q -- regards to this particular person, Mr. Dassey,
15 or the publicity that you indicated, can you set
16 that aside? Or are you still concerned that it
17 may still be a problem to set that aside?

18 A Trying to be as truthful as possible, I think that
19 I'm able to do that. I'd like to think I'm objective
20 enough to do that. But I'm not going to eliminate
21 the fact that it has colored my opinion earlier, you
22 know, in -- in the -- in the publicity and the
23 coverage.

24 And that -- to say that that's not going
25 to be a factor involved in how I have felt about

1 it in the past, and is that going to bleed into
2 what I am seeing, I'd like to think not. But I'm
3 not going to throw that out as saying, absolutely
4 positive, there's no way that this is ever going
5 to affect what I think and how I feel about it,
6 um, because it's a part of the experience that --
7 you know, that I've had prior to having -- to
8 know that I'm going to be involved in -- in doing
9 this sort of thing.

10 So it's, basically, just my way of
11 saying, you know, I -- I'm not going to
12 absolutely one hundred percent say that that's,
13 you know, how I can react, and that I've
14 absolutely heard nothing about this, and it's not
15 going to color what I see, hear, and feel,
16 because it -- it -- it very well may. It's just
17 life experiences.

18 But, again, to ramble around the
19 question, which is what I'm doing here, um, I'd
20 like to think that I am objective enough that
21 I -- to be able to look at something and say,
22 okay, this is the criteria you need to judge this
23 by, that's what's going to be involved, and I'd
24 like to think that I can do that, yes.

25 Q One of the reasons we're doing this process is so

1 that some of the, uh, discussion that might be
2 considered embarrassing, won't be done in open
3 with all the other jurors, and I just want to ask
4 you a couple questions about what I -- I'm -- I
5 guess I'm going to assume were not, obviously,
6 very positive experiences. You indicated you
7 pled no contest once to retail theft? Um --
8 A True.
9 Q Did you -- when you pled -- I'm going to ask you
10 this: You pled no contest because you felt you
11 were guilty or just -- you were offered something
12 you just couldn't refuse?
13 A No, I knew I was guilty.
14 Q If -- if you had --
15 A It was --
16 Q I'm sorry.
17 A I'm sorry. No. Go ahead.
18 Q If you hadn't been guilty, would you have pled
19 not guilty?
20 A Oh, definitely. If I felt that I was -- you know, if
21 I knew that I hadn't done it, certainly.
22 Q The experience with -- you said your wife had
23 been sexual assaulted?
24 A Correct.
25 Q Was that something that you have talked to her

1 about in the past or is this something you know
2 about but you just don't have a lot of detail?
3 You both kept it...

4 A Oh, no, it's been discussed in great detail. Um, we
5 have very few things that we keep from each other as
6 far as secrets.

7 Q Now, this -- Obviously, you've heard the
8 instructions from the Judge earlier. He read the
9 Information which indicated that Mr. Dassey's
10 charged with -- one of the three counts is, uh, a
11 sexual assault. And do you feel that having this
12 life experience, um, involved with a person
13 that's very close to you, your wife, that you'll
14 be able to set that aside to some extent while
15 you're hearing ev -- evidence or testimony about
16 the sexual assault?

17 A Yes, because I think that the -- you know, you -- you
18 can't infer one person's behavior upon another
19 person, even though the actions may be of similar
20 nature. The one thing that I think it will do is it
21 does present you with some amount of empathy for the
22 person involved in the attack.

23 Um, does it give me empathy for the
24 person that's accused of being the attacker?
25 Maybe, because you're more -- you -- you have

1 some personal knowledge and contact with an event
2 such as this, that someone who has absolutely no
3 knowledge or personal, um, re -- uh, experience
4 with -- may have had.

5 Q Thank you.

6 ATTORNEY FREMGEN: I have nothing else.

7 THE COURT: Mr. Fallon, anything?

8 ATTORNEY FALLON: Nothing further.

9 THE COURT: Uh, one last question.

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Uh, on your questionnaire, you noted there may be
13 some employment concerns?

14 A Correct.

15 Q Have those been resolved?

16 A Um, well, without violating, uh, HIPPA laws, um, but
17 to provide you with enough information so that you
18 know what I'm talking about, um, I'm the surgical
19 services coordinator, and I have a manager, and we
20 co-run the department. Um, so, generally, as far as
21 administrative duties, if one of us is not there, the
22 other one can do it. My co-leader has undergone
23 treatment, and is now undergoing treatment for
24 cancer, and will be doing chemotherapy at a point
25 where she may be gone for a number of days each week

1 during that treatment. She started her first ones
2 yesterday.

3 Um, it, uh -- obviously, my, uh -- my
4 boss above her was not happy about the fact that
5 she may be gone and I may be gone, which may put
6 our department at a -- an extremely short-handed
7 point even without anybody calling in sick or
8 being on vacation. So that, um, obviously, is
9 something which does present a hardship to our
10 department, um, but not something that couldn't
11 be, in the best of circumstances, probably worked
12 through.

13 Q All right. Okay. That -- that answers the
14 question. Uh, you may step down, and thank you.

15 (Wherein juror is escorted out.)

16 THE COURT: Mr. Fallon, any motion?

17 ATTORNEY FREMGEN: Judge, I'd ask the
18 court consider moving or striking this juror for
19 cause. Uh, simply on the answers to the
20 questions about his -- the one, can he feel he's
21 an objective person and can set aside his prior
22 opinions, indicated he may not be able to do so,
23 or, I'm not sure, and then this question --
24 answer to your question about presumption of
25 innocence was, I think so. I think those are the

1 two equivocal, uh, of answers to, I think, some
2 pretty important questions.

3 ATTORNEY FALLON: We're not really going
4 to object. Um, my concern is also the -- the job
5 situation as well. So given -- you know, in the
6 best of worlds I probably would -- I would oppose
7 the motion, but I think just on balance, I just
8 have a sense that we should probably excuse this
9 juror.

10 THE COURT: All right. The Court is going
11 to treat that as a -- a stipulated, for cause,
12 dismissal, but I would have -- I would have granted
13 it in any event for -- for those reasons. Uh, it
14 was too close to the line, and the -- the work
15 situation appears to be a little dicey. All right.

16 JUDICIAL ASSISTANT: Juror No. 48, Ryan
17 Johnson.

18 THE COURT: Mr. Johnson, be seated. Good
19 morning again.

20 JUROR JOHNSON: Good morning.

21 **VOIR DIRE EXAMINATION**

22 BY THE COURT:

23 Q Uh, as I mentioned in the courtroom before, we
24 were going to be doing individual voir dire, and
25 that's what this is. I'm going to ask you a few

1 questions. Counsel may or may not have some
2 follow-up questions of you.

3 This is, as you know, the -- the case is
4 the State of Wisconsin vs. Brendan Dassey. It's
5 received a substantial amount of publicity. Have
6 you heard anything about the case?

7 A Not really much at all.

8 Q Uh --

9 A Like maybe here and there.

10 Q Nothing that sticks in your mind?

11 A Ugh-ugh.

12 Q You're going to have to say yes or no.

13 A I'm sorry. No.

14 Q So have you formed any opinion with respect to
15 the guilt or innocence of this defendant?

16 A No.

17 Q Have you at any -- at any juncture discussed this
18 case with anyone else?

19 A No.

20 Q Have you had a family member or a friend who was
21 killed accidentally or otherwise?

22 A No.

23 Q Have you, a family member, or close friend, ever
24 killed anyone accidentally or otherwise?

25 A No.

1 Q Have you, or has any close friend, or relative of
2 yours, ever been the victim of or a witness to
3 any kind of crime, whether it was reported to law
4 enforcement or not?

5 A Yes.

6 Q And that is?

7 A My wife.

8 Q Specifically?

9 A Uh, she was raped.

10 Q How long ago did this occur?

11 A Three years.

12 Q Was she your wife at the time or did it pre --

13 A Fiancé at the time.

14 Q All right. Was the perpetrator caught?

15 A Yes.

16 Q Prosecuted?

17 A Yes.

18 Q Did you feel that law enforcement authorities
19 handled it appropriately?

20 A Yes.

21 Q Uh, do you bring away from this experience
22 anything negative or positive?

23 A No.

24 Q Have you, a close friend, or family member, ever
25 been charged with a crime?

1 A Uh, yes. Not me. My brother.
2 Q He was charged with?
3 A Uh, drug possession.
4 Q And convicted?
5 A Um --
6 Q If you know?
7 A Yes and no. He was put on probation for a little
8 while, and then the charges were dropped, or -- yeah.
9 And then the charges were dropped after he fulfilled
10 that.
11 Q All right. What -- what sort of possession are
12 we talking about here?
13 A Um, I think it was crystal methamphetamine.
14 Q Does -- does the fact that he was involved in
15 this way affect your attitude toward law
16 enforcement?
17 A No.
18 Q Do you believe his case was fairly handled?
19 A I really didn't follow it. He lived 200 miles from
20 me. He's nine years younger. So I -- sure. Yes.
21 Q Okay.
22 A I guess.
23 Q If you were selected as a -- a juror in this
24 case, you would be instructed -- you will be
25 instructed that Mr. Dassey is presumed innocent

1 and he cannot be found guilty of any offense,
2 unless and until the State has proven each
3 element of each offense beyond a reasonable
4 doubt. Could you follow that instruction?

5 A Absolutely. Yes.

6 Q Uh, likewise, there would be another instruction
7 that would relate to Mr. Dassey's testifying or
8 not testifying. You understand under the Wis --
9 un -- under the constitution he has a right not
10 to testify in this case, and that if he decided
11 not to testify, that you could not hold that
12 against him. Rather, you would have to base your
13 decision solely on the evidence introduced at
14 trial?

15 A Yes.

16 Q Could you follow that instruction?

17 A Yes, sir.

18 THE COURT: Mr. Fallon.

19 ATTORNEY FALLON: Uh, no questions.

20 Thank you.

21 THE COURT: Mr. FREMGEN.

22 VOIR DIRE EXAMINATION

23 BY ATTORNEY FREMGEN:

24 Q My -- my only question, Mr. Johnson, and, uh --
25 and -- and -- and again, we want to deal with

1 these issues here rather than proposed -- that
2 potentially place you in a --

3 A Absolutely.

4 Q -- position of embarrassment -- about, uh, your
5 wife having been a victim of a sexual assault.

6 A Um-hmm.

7 Q Ob -- obviously, that had -- at the time, I'm
8 going to assume, had a pretty significant impact
9 on you as well as your wife?

10 A Yeah. At the time it did, yes.

11 Q Um, have you talked about it over the last three
12 years?

13 A Absolutely. That's how -- that's how we got through
14 it. Kind of made us stronger, so...

15 Q Now, setting aside the person who did it,
16 obviously --

17 A Um-hmm.

18 Q -- does that impact your opinion of other persons
19 who are charged with sexual assault?

20 A No.

21 Q You don't feel that just because of that
22 incident, that anyone charged with a sexual
23 assault, for instance, is guilty automatically?

24 A No, because there's -- I -- I -- there's plenty of
25 people that can just say it to get somebody in

1 trouble, you know, so...

2 THE COURT: Any further questions?

3 ATTORNEY FREMGEN: No. No, Judge.

4 THE COURT: You may step down. Thank you.

5 JUROR JOHNSON: All right. Thank you.

6 THE COURT: You're going to wait out in the
7 anteroom for just a moment.

8 (Wherein juror is escorted out.)

9 ATTORNEY FALLON: No motion.

10 ATTORNEY FREMGEN: None.

11 THE COURT: All right. He will be seated
12 in the jury box. Um, next juror.

13 JUDICIAL ASSISTANT: This is Juror No.
14 49, Kristen Durst.

15 THE COURT: You're Ms. Durst?

16 JUROR DURST: Yes.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q This is individual voir dire. I talked about it
20 a bit when you were in the courtroom. I'm going
21 to ask you some questions. Counsel may have
22 follow-up questions or may not. Uh, you're aware
23 this is the State -- State of Wisconsin vs.
24 Brendan Dassey. The case has received a
25 substantial amount of publicity. What, if

1 anything, have you heard about the case?

2 A Um, I have heard what probably a lot of people in the
3 state have heard. I've read some news articles in
4 the local paper, but not a whole lot more than that.

5 Q Based on what you've read, have you formed any
6 opinions about the guilt or innocence of this
7 defendant?

8 A No.

9 Q Have you discussed this case with anyone?

10 A Um, no. I think probably at work prior to, um,
11 receiving notification, there's been some general
12 discussion. I haven't really been involved in that
13 but...

14 Q This is not in-depth discussion?

15 A Not in depth, no.

16 Q Just --

17 A I'm not --

18 Q -- in passing?

19 A Right.

20 Q All right. Have you had a family member or a
21 friend who was killed accidentally or otherwise?

22 A No.

23 Q Have you, a family member, or a close friend,
24 ever killed anyone accidentally or otherwise?

25 A No.

1 Q If you were called to serve on this jury, could
2 you disregard anything you may have heard or read
3 in the media, or from any source, and decide the
4 case solely based on the evidence produced in
5 court?

6 A Yes.

7 Q Have you, a close friend, or a family member,
8 ever been charged with a crime?

9 A No.

10 Q Specifically, have you ever had a close friend or
11 family member that was, uh, involved in a sexual
12 assault?

13 A No.

14 Q If you're selected as a juror in this case, you
15 will be instructed that Mr. Dassey is presumed
16 innocent and that he cannot be found guilty
17 of any offense, unless and until the State has
18 proven each element of each offense beyond a
19 reasonable doubt. If you were selected, uh,
20 could you follow this instruction?

21 A Yes.

22 Q Likewise, uh, Mr. Dassey has a right under the
23 constitution to testify in court or not as he
24 sees fit. If he decides not to testify, uh, you
25 cannot hold that against him. Rather, you must

1 base your -- base your verdict on the evidence
2 that's received in court. Can you follow that
3 instruction as well?

4 A Yes.

5 THE COURT: Mr. Fallon, any questions?

6 ATTORNEY FALLON: Um, just one.

7 VOIR DIRE EXAMINATION

8 BY ATTORNEY FALLON:

9 Q Um, is there anything about your background in
10 journalism or that experience of having worked in
11 that field that makes you wonder as to whether
12 you could fairly and impartially decide this case
13 based on, for instance, pretrial publicity and
14 whatever other experience you had as a
15 journalist?

16 A I don't believe that that would, uh, hinder things in
17 any way. I haven't worked, um, in that capacity in a
18 few years, um, nor in the state of Wisconsin.

19 Q When you worked in the field, did you cover the
20 court system and handle any type of, um -- or
21 cover any murder trials or anything like that?

22 A Um, not specifically cover. I was a news announcer,
23 so I did read stories on, you know --

24 Q Oh, I see.

25 A -- daily news, yes.

1 Q Okay. All right. Thank you.

2 THE COURT: Anything, Mr. Fremgen?

3 ATTORNEY FREMGEN: No, Judge.

4 THE COURT: You may step down.

5 JUROR DURST: Okay.

6 THE COURT: You can wait in the anteroom
7 with, uh, the -- the judicial assistant for a
8 moment.

9 (Wherein juror is escorted out.)

10 THE COURT: Any motion, Mr. Fallon?

11 ATTORNEY FALLON: None.

12 THE COURT: Mr. Fremgen?

13 ATTORNEY FREMGEN: No.

14 THE COURT: All right. Uh, before we call
15 the -- the next juror, uh, I was discussing with one
16 of the bailiffs, uh, the -- the lunch. I propose we
17 take 45 minutes at one time or another. Trying to
18 find out when the cafeteria is going to be least
19 busy so the jurors and -- and we can circulate
20 through it. Is that 45 minutes, is that either too
21 long or too short for any of you?

22 ATTORNEY FREMGEN: That's fine.

23 (Discussion off the record.)

24 ATTORNEY FALLON: Well, Counsel just
25 raised an interesting question. Is there anyone

1 you want to send down now? I mean, figure we've
2 got -- I mean, we could probably do three or four
3 before noon, and you could --

4 THE COURT: That's probably -- it's a good
5 idea.

6 ATTORNEY FALLON: You know, send a bunch
7 of them down now and we can have them come back
8 by 12:30, quarter to 1?

9 BAILIFF: Yeah. We were just going to
10 suggest maybe --

11 COURT REPORTER: Is this on the record?
12 Do we need this on the record?

13 THE COURT: Sure. Nah, you don't need
14 it on.

15 (Discussion off the record.)

16 (Nine jurors previously seated in jury
17 box are brought into the courtroom.)

18 THE COURT: Just -- we're sending you folks
19 down for lunch now. Uh, prior to going, I just want
20 to admonish you, again, instruct you that -- oops--

21 BAILIFF: We have one more.

22 THE COURT: All right. Uh, I -- I just
23 want to instruct you, again, not to say anything
24 about this case to anyone. That includes
25 yourselves. You can talk about anything else you

1 want to, but anything that has to do with this case
2 is -- is out of bounds. Uh, so you're going to take
3 them downstairs to the cafeteria or just simply send
4 them down?

5 BAILIFF: We'll just -- we'll just turn
6 them loose.

7 THE COURT: All right. We'll see you a
8 little later.

9 JUDICIAL ASSISTANT: This is Mr.
10 Williams, No. 50.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Mr. Williams, this is individual voir dire. I'm
14 going to ask you a few questions. Counsel may or
15 may not have some follow-up questions to -- to
16 ask you.

17 Uh, this, as you know, is the case of
18 the State of Wisconsin vs. Brendan Dassey. It's
19 received a fair amount of -- of publicity. Have
20 you -- have you heard anything about this case?

21 A Yes, I have.

22 Q Uh, from what source did you learn whatever it is
23 you've heard?

24 A Um, mostly just newspaper accounts and maybe a blurb
25 on the, uh, radio or TV, but -- but since I was given

1 the questionnaire, I steered clear of it, so...

2 Q All right. Based on the information that -- that

3 you had received, have you formed an opinion, uh,

4 of whether or not, uh, Mr. Dassey is innocent or

5 guilty?

6 A No, sir.

7 Q Have you discussed this case with any other

8 persons?

9 A No, sir.

10 Q Have you had a family member or a friend who was

11 killed accidentally or otherwise?

12 A Uh, when I was 22 years old, my grandfather was --

13 was murdered in California.

14 Q All right. I'm not asking your age at this

15 point, but I presume that was some time ago?

16 A Yes, sir. I'm 37.

17 Q All right. So was the -- was the person who

18 committed this, uh, murder prosecuted?

19 A No, sir.

20 Q There's been no prosecution?

21 A Still an open case.

22 Q Has that affected in any way the -- the manner in

23 which you view law enforcement?

24 A No, sir.

25 Q Uh, have you, a family member, or a close friend,

1 ever killed anyone accidentally or otherwise?

2 A No, sir.

3 Q Uh, you discussed your grandfather and the fact

4 that he was the -- the victim of -- of murder.

5 Uh, any other friend, or relative, or family

6 member, that -- that was the victim of a crime?

7 A No, sir.

8 Q Uh, specifically, a sexual assault? Any close

9 friends or family member?

10 A No, sir.

11 Q Can you set aside whatever you may have heard or

12 read about this case in the media, or any other

13 source, and decide this case based solely on the

14 evidence produced in court?

15 A Absolutely.

16 Q If you were selected as a juror, you will be

17 instructed that, uh, Mr. Dassey is presumed

18 innocent and that he cannot be found guilty of

19 any offense, unless and until the State has

20 proven each element of each offense beyond a

21 reasonable doubt. If you were a juror, could you

22 follow that instruction?

23 A Yes, sir.

24 Q Uh, likewise, uh, if you were a juror, you would

25 be instructed that Mr. Dassey has a

1 constitutional right not to testify in this case,
2 and that if he decides not to testify, you cannot
3 hold that against him. Rather, you must base
4 your decision solely on the evidence introduced
5 at trial. If you were a juror, could you follow
6 that instruction?

7 A I could, sir.

8 THE COURT: Mr. Fallon?

9 ATTORNEY FALLON: No questions.

10 THE COURT: Mr. Fremgen?

11 ATTORNEY FREMGEN: Judge, uh, just a
12 few.

13 **VOIR DIRE EXAMINATION**

14 BY ATTORNEY FREMGEN:

15 Q Mr. Wilson -- or Williams, excuse me, the Judge
16 asked you about, um, the incident, or your
17 experience with your grandfather having been
18 murdered, and asked about the impact -- whether
19 it has impacted on you, your feelings about law
20 enforcement. Does it have any impact or that had
21 an impact on your feelings about persons charged
22 with crimes?

23 A No. Uh, I think the only way it's impacted me was
24 loss of a -- of a grandparent and how that made me
25 feel at the time. But my opinion of law enforcement

1 or -- or perpetrators of crime, I -- it didn't
2 have -- that didn't have any bearing on it. It was
3 more of the loss of my grandfather that was very
4 troubling.

5 Q And I would assume, I mean, obviously, you would
6 have empathy then with persons who've lost loved
7 ones just like yourself?

8 A Although I -- I -- I wouldn't know -- I've never
9 discussed it with other people who have, uh, lost
10 loved ones in the same situation, so I -- I don't
11 know. I -- I mean, I only know how I felt.

12 Q That's fine. Would this be a hardship being away
13 from your family and unable to -- I understand
14 from your questionnaire, you're -- you're the
15 stay-at-home dad and your wife works --

16 A That's correct.

17 Q -- full-time.

18 A My profession -- I'm a history teacher, and, um, my
19 wife and I always like to kid that I lost the coin
20 toss. So I stayed home this year with our three
21 children. One of them -- two of them are at -- they
22 go to school part -- uh, and one of them is an
23 infant. Would it be troubling is what you're asking?
24 I think it would be troubling to stay away from my
25 family in any circumstance, um, so, of course.

1 Q Well -- uh, and -- and, uh, maybe I didn't phrase
2 it correctly. Uh, do you have appropriate, um,
3 caretakers that you -- you -- It won't be a
4 problem for you as the, uh -- the full-time
5 caretaker to not be there for two weeks?

6 A It -- it -- it -- it won't be a problem as far as
7 fiscally, financially, no. And my -- and we do have,
8 um -- we've already set up as -- by the questionnaire
9 and the summons that I would receive from Manitowoc
10 County Court here, Your Honor, uh, I've already made
11 those arrangements.

12 So in that sense, arrangements have
13 already been made, um, but, again, if you're
14 asking me, is it going to be difficult to stay
15 away from my three children and my wife for two
16 weeks or longer, um, I wouldn't be honest to tell
17 you that that wouldn't be hard, but...

18 Q No. And -- and I'm assuming all jurors would
19 have the --

20 A Right.

21 Q -- same opinion you do. I -- because you're in a
22 more unique situation, having been the -- the
23 full-time stay-at-home dad --

24 A Right.

25 Q -- that it's --

1 A And -- and having taught civics to my students in the
2 past, you know, preaching the fact that this is an
3 important process in the legal system, and that
4 people are entitled to have a juror of their peers, I
5 find it very difficult, and maybe even hypocritical,
6 for me to make arrange -- uh, to create an
7 arrangement that I wouldn't be able to -- to arrange
8 strictly upon need.

9 So, financially, it's not a problem.
10 Um, but, again, if you're asking me, you know, is
11 it going to be painful to some extent to be away
12 from my children? Absolutely. But arrangements
13 have been made. My wife is very -- You know,
14 we're partners in this whole thing together. She
15 has similar feelings about the judicial system as
16 I, and that's -- I've made arrangements.

17 Q I appreciate that. Thank you.

18 THE COURT: Any further questions?

19 ATTORNEY FREMGEN: Just -- Judge, um,
20 could we --

21 THE COURT: Go ahead.

22 Q (By Attorney Fremgen) There was one other
23 question on -- on the questionnaire. You
24 indicated your wife is a physician?

25 A Yes, sir.

1 Q Does she have a specialty?

2 A She's an internist.

3 Q Okay. Thank you.

4 THE COURT: You may step down. Thank you.
5 You're going to accompany the judicial assistant
6 into the anteroom there.

7 (Wherein juror is escorted out.)

8 THE COURT: Motions, Mr. Fallon?

9 ATTORNEY FALLON: No motion.

10 THE COURT: Mr. Fremgen?

11 ATTORNEY FREMGEN: No.

12 THE COURT: All right. Uh, Mr. Williams
13 will be seated. Does anyone suggest I admonish this
14 juror again?

15 ATTORNEY FALLON: No.

16 THE COURT: He can go.

17 JUDICIAL ASSISTANT: This is Juror No.

18 54, Thomas Heinzl.

19 THE COURT: Hi, Mr. Heinzl. Be seated.

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q Uh, before, I told you we were doing individual
23 voir dire and here you are at individual voir
24 dire. I'm going to ask you some questions.

25 A Okay.

1 Q Uh, after I'm done, counsel may or may not have
2 some follow-up questions.

3 A Okay.

4 Q You're aware that this is the case of the State
5 vs. Brendan Dassey. It has received a
6 substantial amount of publicity. Have you heard
7 anything about this case?

8 A No.

9 Q Nothing?

10 A There was, um -- on the TV at one point in time there
11 was mention of that. I -- I don't remember enough
12 details to say, oh, yes, I remember anything, but,
13 um, I do remember something about the -- the case.

14 Q So if I ask it this way, have you heard anything
15 substantive that you remember about this case?

16 A Not at all.

17 Q Uh, have you formed any opinion as to his guilt
18 or innocence?

19 A No.

20 Q Have you had a family member or a friend who was
21 killed accidentally or otherwise?

22 A Yes.

23 Q And that would be?

24 A Um, my brother.

25 Q What -- what were the circumstances?

1 A He was in an auto accident.

2 Q How long ago was this?

3 A Um, it would have been March 31 this past year.

4 Q Of 2006?

5 A Yes.

6 Q Has that had any impact on the way that you think
7 about law enforcement?

8 A No.

9 Q Neither positive or negative?

10 A No.

11 Q Have you, a family member, or a close friend,
12 ever killed anyone accidentally or otherwise?

13 A No, I haven't. When my brother was killed, it was,
14 um -- he was in an automobile with that -- with his
15 wife, and, uh, his brother-in-law was driving the
16 vehicle so...

17 Q I see. I see. And were there other fatalities
18 in that accident --

19 A No.

20 Q -- besides your brother?

21 A No.

22 Q If you were called to serve as a juror in this
23 case, can you disregard that which you may have
24 heard in the media and decide the case solely
25 based on the facts that are presented in court?

1 A Yes.

2 Q Uh, have you, or any close friend, or relative,
3 ever been the victim of or a witness to any kind
4 of crime, whether it was reported to law
5 enforcement or not?

6 A No.

7 Q How about, uh -- I'll -- I'll be a little more
8 specific. Have any close friend or relative of
9 yours ever been the victim of a sexual assault?

10 A No.

11 Q If you're selected as a juror in this case, you
12 will be instructed that Brendan Dassey is
13 presumed innocent and that he cannot be found
14 guilty of any offense, unless and until the State
15 has proven each element of each offense beyond a
16 reasonable doubt. If you were selected as a
17 juror, could you follow that instruction?

18 A Definitely.

19 Q Uh, likewise, if you were selected as a juror,
20 you would be instructed that Mr. Dassey has a
21 constitutional right not to testify in this case,
22 and that if he decides not to testify, you cannot
23 hold that against him. Rather, you must base
24 your decision solely on the evidence introduced
25 at trial. Could you, as a juror, follow that

1 instruction?

2 A Yes.

3 THE COURT: Mr. Fallon, any questions?

4 ATTORNEY FALLON: None.

5 THE COURT: Mr. Fremgen, any questions?

6 VOIR DIRE EXAMINATION

7 BY ATTORNEY FREMGEN:

8 Q Uh, Mr. Heinzl?

9 A Yes.

10 Q Was your brother-in-law charged with a crime
11 in -- related to that car accident?

12 A I believe in the state of Las Vegas they have to
13 file, um, a charge. I don't know, specifically, what
14 it was. I know he had to go to court there, but, um,
15 he was basically dismissed. Uh, I believe the, uh --
16 the judge said, we put you through enough, they're
17 not going to do anything to them.

18 Q Do you think that was fair?

19 A Yes.

20 Q Okay. Nothing else.

21 THE COURT: All right. You may step down.
22 The judicial assistant will take you to the, um,
23 anteroom, and you'll be free to go down and -- and
24 have lunch if you wish.

25 JUROR HEINZEL: Okay. Thank you.

1 (Wherein juror is escorted out.)
2 THE COURT: No motions?
3 ATTORNEY FALLON: No.
4 ATTORNEY FREMGEN: No, Judge.
5 THE COURT: All right. He will be seated.
6 JUDICIAL ASSISTANT: Juror No. 63, Becky
7 Foss.
8 THE COURT: Hi, Ms. Foss. Why don't --
9 JUROR FOSS: Hello.
10 THE COURT: -- you just be seated there.

11 **VOIR DIRE EXAMINATION**

12 BY THE COURT:

13 Q This is, as I noted before in the other
14 courtroom, individual voir dire. I'm going to
15 ask you some questions. Counsel may or may not
16 have some follow-up questions to you.

17 A Okay.

18 Q Uh, this is the State -- the case here is the
19 State of Wisconsin vs. Brendan Dassey. It's
20 received a substantial amount of publicity. Have
21 you heard anything about this case?

22 A Not this one in particular, no.

23 ATTORNEY FALLON: I'm sorry, I couldn't
24 hear that response.

25 JUROR FOSS: No.

1 THE COURT: Uh, she said not this one in
2 particular.

3 Q (By the Court) By that, have you heard something
4 about a different case? The Avery case?

5 A Yes.

6 Q All right. But you've heard nothing about this
7 particular case?

8 A No.

9 Q Based on anything you've heard about any case,
10 uh, have you formed any opinions about the guilt
11 or the innocence of Mr. Dassey?

12 A No.

13 Q Have you discussed this case with anyone?

14 A No.

15 Q Have you had a family member or a friend who was
16 killed accidentally or otherwise?

17 A No.

18 Q Have you, a family member, or -- or close friend,
19 ever killed anyone accidentally or otherwise?

20 A No.

21 Q Um, have you, a close friend, or a family member,
22 ever been arrested?

23 A Um, my ex-boyfriend was about three years ago.

24 Q And he was arrested for what?

25 A Um, selling marijuana.

1 Q Was he convicted?

2 A Yes.

3 Q Does the fact that he was arrested and convicted

4 affect your attitude in any way, positive or

5 negative, toward law enforcement authorities?

6 A No.

7 Q Uh, have you, a close friend, or relative, ever

8 been the victim or witness to a crime, any kind

9 of crime, whether it was reported to law

10 enforcement or not?

11 A Um, yeah, my sister was mugged maybe a year ago in

12 Waukesha.

13 Q All right. Anything else? Was it reported to

14 law enforcement?

15 A Yeah. Yes.

16 Q Did they -- did they, uh, catch the --

17 A Yes, they did.

18 Q -- perpetrator? Does that experience, in your

19 own mind, affect the way you think about law

20 enforcement?

21 A No.

22 Q Uh, have you, or a close friend, or relative,

23 ever been the victim of a sexual assault?

24 A No.

25 Q Have you, a close friend, or a relative, ever

1 been charged with a crime? Other than the --

2 A Other than that one?

3 Q Yeah.

4 A No.

5 Q If you're selected as a juror, you'll be
6 instructed that Mr. Dassey is presumed innocent
7 and that he cannot be found guilty of any
8 offense, unless and until the State has proven
9 each element of each offense beyond a reasonable
10 doubt. If you were selected as a juror in this
11 case, could you follow that instruction?

12 A Yes.

13 Q Likewise, you would be instructed that Mr. Dassey
14 has a right not to testify in this case, and that
15 if he decides not to testify, you cannot hold
16 that against him. Rather, you must base your
17 decision solely on the evidence introduced at
18 trial. Could you follow that instruction as
19 well?

20 A Yes.

21 THE COURT: All right. Mr. Fallon, any
22 questions?

23 ATTORNEY FALLON: Yes. Thank you.

24 VOIR DIRE EXAMINATION

25 BY ATTORNEY FALLON:

1 Q Um, Ms. Foss, you indicated you -- you had some
2 familiarity or some opinions, I guess, with
3 respect to the other case involving Mr. Avery.
4 What opinions did you have relative to that case?

5 A Oh, um, I didn't have any opinion, but I just
6 happened to see one news article about it.

7 THE COURT: Sh -- sh -- she did not say she
8 had any opinions, but she said she was aware.

9 ATTORNEY FALLON: Oh, I see. I'm sorry.

10 Q (By Attorney Fallon) Um, perhaps I'm just
11 misreading this, but you seemed a little pensive
12 in -- in one of your responses regarding, uh,
13 discussions or, uh, the fact that, um, your
14 ex-boyfriend was arrested. Is -- is there
15 anything about that experience at all that --
16 that causes you some question or concern whether
17 you think you could, um, fairly evaluate the
18 evidence in this case?

19 A I don't think so. No.

20 Q Okay. Um -- That's all I have. Thank you.

21 THE COURT: Any questions, Mr. Fremgen?

22 VOIR DIRE EXAMINATION

23 BY ATTORNEY FREMGEN:

24 Q Ms. Foss, when the Judge was asking you about the
25 incident that occurred with your sister in

1 Waukesha, whether it impacted on your opinion or
2 feelings towards law enforcement --

3 A Um-hmm.

4 Q -- uh, did that have any impact on your feelings
5 towards persons who are charged with crimes?

6 A No.

7 Q What about the experience that you had when your
8 ex-boyfriend was charged with -- with a drug
9 offense? You -- you -- you indicated he's an
10 ex-boyfriend?

11 A Right.

12 Q And from your questionnaire, you were somewhat
13 disturbed by how the search took place in your
14 home?

15 A Um-hmm.

16 Q Did that leave you with any strong feelings or an
17 impact about, um, persons who are charged with
18 crimes, such as in this -- that case, I suppose,
19 a drug offense?

20 A No.

21 ATTORNEY FREMGEN: I have nothing else.

22 THE COURT: All right. You may step down.

23 Uh, you can also go to lunch. Accompany the
24 judicial assistant. You're going to wait in the
25 anteroom for just a moment.

1 (Wherein juror is escorted out.)

2 THE COURT: Mr. Fallon, any motion?

3 ATTORNEY FALLON: No.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: No.

6 THE COURT: She will be seated. Next.

7 JUDICIAL ASSISTANT: No. 65, Linda

8 Harris.

9 THE COURT: Hi, Ms. Harris. Be seated
10 there if you would, please.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Uh, I mentioned that we were doing individual
14 voir dire. You're now here for individual voir
15 dire. I'm going to ask you a few questions, and
16 then counsel may have some follow-up questions,
17 or not, as they choose.

18 A All right.

19 Q Uh, you're aware this is the State of Wisconsin
20 vs. Brendan Dassey. It, uh -- The case is. It's
21 received a substantial amount of publicity. Have
22 you heard anything about this case?

23 A Um, you know, just that it was going to occur.

24 Q All right. I'm trying to ques --

25 A I mean --

1 Q -- trying to get at -- I'm sorry. Go on.

2 A Yeah. Just that it was going to occur, you know, and

3 I had read, you know, about Steven Avery.

4 Q All right. So you -- you had heard something

5 about the Steven Avery case; is that correct?

6 A Correct.

7 Q You have heard that this case, State vs. Dassey,

8 is going to occur; is that correct?

9 A Correct.

10 Q Where did you learn about the Dassey case?

11 A On TV. Channel --

12 Q Any --

13 A -- 3.

14 Q All right. Any other source that you can recall?

15 A Um, no.

16 Q Has anything that you -- you heard about this,

17 uh -- based on anything you heard, have you --

18 have you formed any opinions as to the guilt or

19 innocence of Mr. Dassey?

20 A No.

21 Q Have you discussed this case with anyone?

22 A No.

23 Q Have you had a family member or a friend who was

24 killed accidentally or otherwise?

25 A No.

1 Q Uh, have you, a family member, or a close friend,
2 ever killed anyone?

3 A No.

4 Q Have you, a close friend, or a relative, ever
5 been the victim of a crime, whether it's reported
6 or not?

7 A I was a victim of a crime.

8 Q And what crime was that?

9 A Um, a house invasion while I was home.

10 Q How long ago did this occur?

11 A Over 30 years ago.

12 Q All right. I -- Did this leave any lasting
13 effect or any effect whatsoever on your
14 impression, positive or negative, of law
15 enforcement agencies?

16 A No.

17 Q Was whoever did the home invasion caught?

18 A No.

19 Q Uh, have you, or a close friend, or relative,
20 ever been the victim of a sexual assault?

21 A No.

22 Q Have you, a close friend, or family member, ever
23 been arrested?

24 A No.

25 Q Charged with a crime?

1 A No.

2 Q If you were selected as a juror in this case, you
3 would be instructed that Mr. Dassey is presumed
4 innocent and that he cannot be found guilty of
5 any offense, unless and until the State has
6 proven each element of each offense beyond a
7 reasonable doubt. Could you follow that
8 instruction?

9 A I could.

10 Q Likewise, you would be instructed that Mr. Dassey
11 has a constitutional right not to testify in --
12 in this case, and that if he decides not to
13 testify, you could not hold that against him.
14 Rather, you must base your decision solely on the
15 evidence introduced at trial. As a juror, could
16 you follow that instruction as well?

17 A Yes, I could.

18 THE COURT: All right. Mr. Fallon, any
19 questions?

20 ATTORNEY FALLON: None.

21 THE COURT: Mr. Fremgen?

22 ATTORNEY FREMGEN: No, Judge.

23 THE COURT: All right. Uh, you may step
24 down.

25 JUROR HARRIS: Okay.

1 THE COURT: You can go to lunch. Uh,
2 you're going to wait in the anteroom for just a
3 moment with the judicial assistant.

4 (Wherein juror is escorted out.)

5 THE COURT: Any motions from either
6 counsel?

7 ATTORNEY FALLON: No.

8 ATTORNEY FREMGEN: No, Judge.

9 THE COURT: She'll be seated. Was that the
10 last juror? Did we --

11 ATTORNEY FREMGEN: There's one more.

12 THE COURT: One more? Okay. Then, uh,
13 Counsel, let me just ask you before we bring the
14 next juror in, uh, how big a lunch break do you
15 want?

16 ATTORNEY FALLON: Forty-five is fine.

17 THE COURT: Forty-five. Okay.

18 ATTORNEY FREMGEN: That's fine, Judge.

19 THE COURT: All right. Next juror, please.

20 JUDICIAL ASSISTANT: This is No. 67,

21 Brenda Garske.

22 THE COURT: Hi, Ms. Garske.

23 JUROR GARSKE: Hi.

24 THE COURT: Just take that chair if you
25 would, please.

VOIR DIRE EXAMINATION

BY THE COURT:

Q Ms. Garske, this is individual voir dire. Uh, I'm going to ask you some questions, after which counsel may have some questions to ask you as well.

A Okay.

Q Uh, you're aware this is the State of Wisconsin vs. Brendan Dassey. It's a case which has received a substantial amount of publicity. Have you heard anything about this case?

A No.

Q Nothing?

A I haven't been listening. No.

Q All right. Uh, you haven't read anything about it either?

A No.

Q So as we sit here today, do you have any preconceived notion, uh, opinion about the guilt or innocence of this defendant?

A No.

Q Have you had a family member or a friend who was killed accidentally or otherwise?

A No.

Q Have you, a family member, or a close friend,

1 ever killed anyone accidentally or otherwise?

2 A No.

3 Q Have you, or has any close friend, or relative,
4 ever been the victim of or a witness to any kind
5 of crime, whether it was reported to the police
6 or not?

7 A Not that I recall.

8 Q All right. Uh, specifically, have you, a family
9 member, or a friend, ever been the victim of a
10 sexual assault?

11 A No.

12 Q Have you, a close friend, or family member, ever
13 been arrested?

14 A No. Well, I guess my -- I don't know if my
15 brother-in-law was.

16 Q All right. Your -- your -- your brother-in-law
17 was involved in -- in something with --

18 A Yeah.

19 Q -- the law?

20 A But I don't know all the details.

21 Q Do you know any of the details?

22 A Just that it was a sexual thing.

23 Q Oh. He may have been involved in a sexual
24 assault?

25 A Um-hmm.

1 Q Uh, you're going to have to say, yes or no --
2 A Yes.
3 Q -- for the benefit of the court reporter. Was he
4 prosecuted if you know?
5 A I don't know.
6 Q All you know is that he was involved; is that
7 correct?
8 A Correct.
9 Q Uh, does his involvement in -- in any way,
10 positively or -- or negatively, affect your view
11 of law enforcement?
12 A No.
13 Q Um, of sexual assaults?
14 A No.
15 Q If you were selected as a juror, you would be
16 instructed that Brendan Dassey is presumed
17 innocent and that he cannot be found guilty of
18 any offense, unless and until the State has
19 proven each element of each offense beyond a
20 reasonable doubt. If you were selected as a
21 juror in this case, would you be able to follow
22 that instruction?
23 A Yes.
24 Q Likewise, if you were selected as a juror, you'd
25 also be instructed that, uh, Mr. Dassey had a

1 constitutional right not to testify if he so
2 chose, and that if he decided not to testify, you
3 could not hold that against him. Rather, you
4 would have to determine the case based on the
5 evidence that was before you. Could you follow
6 that instruction as well?

7 A Yes.

8 THE COURT: Mr. Fallon, any questions?

9 ATTORNEY FALLON: Uh, two.

10 **VOIR DIRE EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Um, so all that you know is it's your brother --
13 uh, brother-in-law is a sex offender in Alabama?

14 A That's all I know, yes.

15 Q It -- so with that label, does that mean he has
16 to register as an offender down there or --

17 A That I don't know.

18 Q How -- how -- how do you know that he's a sex
19 offender?

20 A My mother-in-law, um, at Christmastime a few years
21 back, um, said that he was in some sort of trouble.

22 Q Oh. Okay. So you -- All right. And so you
23 don't really know if he's actually been convicted
24 or registered or anything like that?

25 A No.

1 Q Okay. Um, the only other question that I have,
2 then, I see from the questionnaire that your
3 husband is scheduled for some surgery the -- the
4 first full week of May?

5 A Yes, that's correct.

6 Q Um, I mean, we're -- expect the trial to be done,
7 perhaps, a full week before that, but are there
8 any, um, uh, pre-surgical preparations that you
9 might have to be home to assist your husband, and
10 get ready for, and things of that sort?

11 A No. Nothing again until after the 7th.

12 Q All right. So even though you -- if you were
13 selected, you could be gone for two weeks. That
14 wouldn't create any, um, hardship or concerns in
15 terms of caring for your husband in the meantime?

16 A No.

17 Q That's all I have.

18 THE COURT: Mr. Fremgen, anything?

19 ATTORNEY FREMGEN: No, sir.

20 THE COURT: You may step down. Uh, just
21 accompany the judicial assistant into the anteroom,
22 and then feel free to go to lunch.

23 (Wherein juror is escorted out.)

24 THE COURT: Motions, gentlemen?

25 ATTORNEY FALLON: None.

1 ATTORNEY FREMGEN: No.

2 THE COURT: All right. She'll be seated.

3 Uh, we are temporarily out of jurors, so why don't

4 we break for 45 minutes for lunch.

5 ATTORNEY FREMGEN: That's fine.

6 THE COURT: All right.

7 (Recess had at 12:10 p.m.)

8 (Reconvened at 1:06 p.m.)

9 JUDICIAL ASSISTANT: This is Juror No.

10 72, Ronald Paltz.

11 THE COURT: Mr. Paltz, why don't you take a

12 chair there if you would, please.

13 JUROR PALTZ: Thank you.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q This is the individual voir dire part of voir

17 dire. I talked a little bit about it in the

18 court earlier this morning. I'm going to be

19 asking you a number of questions, and then

20 counsel may or may not have follow-up questions.

21 A Okay. Great.

22 Q Uh, the cases we're here on, as you know, is

23 State vs. Brendan Dassey, and it's received a

24 substantial amount of publicity. What, if

25 anything, have you heard about it?

1 A Um, I've seen it in, uh, the newspaper, um, on TV,
2 and some on the radio.

3 Q Based on what you have heard and seen, have you
4 formed any opinions about the guilt or innocence
5 of the defendant, Brendan Dassey?

6 A No.

7 Q Have you discussed this case with others?

8 A Um, before -- I should say, no. Not this particular
9 case.

10 Q All right. Might you have discussed --

11 A The -- the Avery case.

12 Q All right. Uh, you understand this is a separate
13 case?

14 A Yes, I do.

15 Q And whatever happened in Avery, happened in
16 Avery. You can consider this case on its own
17 merits?

18 A Yes, I can.

19 Q You had a family member or a friend who was
20 killed accidentally or otherwise?

21 A No.

22 Q Have you, a family member, or a close friend,
23 ever killed anyone accidentally or otherwise?

24 A Nope.

25 Q If you're called upon to serve as a juror in this

1 case, can you disregard anything you may have
2 read or heard in the media, or from any other
3 source, about this case, and decide the case
4 based solely on the evidence that you hear?

5 A Yes.

6 Q Have you, or has any close friend, or relative,
7 ever been the victim of the witness -- uh,
8 witness to any kind of crime, whether it's
9 reported to law enforcement or not?

10 A No.

11 Q Uh, specifically, have you, or a close friend, or
12 relative, been the victim of a sexual assault?

13 A No.

14 Q Have you, or a close friend, or a family member,
15 ever been charged with a crime?

16 A No.

17 Q If selected as a juror in this case, you will be
18 instructed that Mr. Dassey is presumed innocent
19 and that he cannot be found guilty of any
20 offense, unless and until the State has proven
21 each element of each offense beyond a reasonable
22 doubt. If you were selected as a juror, could
23 you follow this instruction?

24 A Yes.

25 Q Likewise, you would be instructed that Mr. Dassey

1 has a constitutional right not to testify, and
2 that if he decides not to testify, you cannot
3 hold that against him. Rather, you must base
4 your decision solely on the evidence introduced
5 at trial. Could you follow that instruction?

6 A Yes.

7 THE COURT: Mr. Fallon?

8 ATTORNEY FALLON: No questions.

9 THE COURT: Mr. Fremgen.

10 ATTORNEY FREMGEN: Just, uh, one
11 followup.

12 VOIR DIRE EXAMINATION

13 BY ATTORNEY FREMGEN:

14 Q From your questionnaire, you indicated you are --
15 have some relation to a Winnebago County
16 Sheriff's Officer?

17 A Correct.

18 Q Is that a close relation or cousin?

19 A It's a good friend.

20 Q Oh, good friend?

21 A Yes.

22 Q Okay. When you say that you had discussed, uh,
23 the Avery case with others, did that include this
24 officer friend from Winnebago?

25 A No, it did not.

1 Q Okay. So it wasn't anyone that was actually
2 closer to the action, so to speak?

3 A No.

4 ATTORNEY FREMGEN: Nothing else.

5 THE COURT: All right. Thank you. You may
6 step down, and go with the --

7 JUROR PALTZ: I -- I was just going to
8 say one thing on a hardship. I don't know if I
9 can say anything. I guess --

10 THE COURT: Go ahead.

11 JUROR PALTZ: I mean, the only thing I
12 ask is I'm currently in the process of building a
13 family-owned business. Um, I'm the general
14 contractor on the business. The business has to
15 be open -- doesn't have to be open -- but our
16 goal is we're going to have it open by June 1.
17 Um, and I'm, generally -- like I said, the
18 general contractor, so I have con --
19 subcontractors calling me constantly on this
20 business.

21 Um, I just wanted to voice that, um, any
22 other time, the timing would be great. This
23 timing is terrible for me. I just wanted to
24 voice that, to be honest.

25 THE COURT: All right. Thank you.

1 ATTORNEY FREMGEN: Judge, can I follow
2 up on that question --

3 THE COURT: Go ahead.

4 ATTORNEY FREMGEN: -- if I might?

5 Q (By Mr. Fremgen) Uh, is that going to be
6 weighing on your mind while this case is going
7 on? Let's say, if you were, uh, picked as a
8 juror, and -- and asked, uh, uh -- try to, uh,
9 have one hundred percent of your attention
10 focused on the trial, will the fact that you have
11 this business, and you're not going to be able to
12 respond to a number of questions, as you point
13 out, with the other contractors, uh, is that
14 going to be weighing on your mind, taking your
15 attention away from the evidence, testimony?

16 A Um, I will be thinking of it. I'll say that much.
17 Um, and I put that in my questionnaire, too, as --
18 as, uh -- it was in there. Um --

19 Q Sure.

20 A -- I -- and I just wanted to be honest with that.
21 Because, I mean, it's -- it's a big project. It's,
22 um -- I'm totally going to be self-employed after
23 this project's done. So, I mean, everything is
24 hinging off this project, um, for us to do this. So,
25 uh, I just wanted to be honest with it and up front.

1 Q And -- and, again, in that regard, let -- let's
2 say, for instance, you're in deliberations, um,
3 be -- you would be able to, again, put that off
4 and not let that be a focus of trying to get
5 quicker through the deliberation process versus
6 taking your time, and listening to the evidence,
7 and listening to all the jurors, or doing
8 whatever you do as a juror in that -- deciding
9 what the verdict should be? We don't want you to
10 rush to judgment --

11 A Right.

12 Q -- because you have this other --

13 A I understand.

14 Q -- obligation?

15 A I understand that. Um, I guess it's kind of hard for
16 me to say. But I -- I -- I just say this much, it's
17 on my mind. I mean, even now on my break, I'm making
18 phone calls, um, setting up subcontractors, to deal
19 with subcontractors, material handling, people that
20 are dealing stuff with us. I mean, it's -- right now
21 it is between -- besides my full-time job, this is --
22 it's -- a hundred percent of my time is devoted to
23 the -- to my full-time job plus this other project
24 that's going on.

25 Q I appreciate that. Thank you.

1 VOIR DIRE EXAMINATION

2 BY THE COURT:

3 Q One last question, and I'm sorry to interrupt
4 you, but, uh, would this, as you describe it,
5 pose a significant economic hardship for you?

6 A Um, what it would -- what it is, it's a dog kennel
7 training facility. Majority of your business for dog
8 kennels is June, July and August. That's why we're
9 trying to be open in June, to get the full amount of
10 reven -- or revenue for this kennel. That's --
11 that's the main reason we're trying to be open by
12 June 1.

13 THE COURT: Mr. Fallon?

14 VOIR DIRE EXAMINATION

15 BY ATTORNEY FALLON:

16 Q Does it provide any solace at all that there's a
17 very good chance this case will be completed by
18 April 30? In other words, you still have a full
19 month before your -- your target opening?

20 A The only problem's the building right now is just --
21 structure of the building is just up right now.
22 There's no -- they're just sheeting the building as
23 we speak, so we've got subcontractors from heating
24 and cooling and all that process going through. And
25 I just wanted to be totally honest with it.

1 Q Sure. Okay.

2 THE COURT: Well, we appreciate that.

3 Thank you. You may step down.

4 (Wherein juror is escorted out.)

5 THE COURT: Mr. Fallon?

6 ATTORNEY FALLON: My immediate thought
7 on that was let's just put him on reserve. In
8 other words, we might get to 30, but let's take a
9 few extras, like maybe 32, 35, and then we can
10 kick him later? Or unless you want to just kick
11 him now.

12 THE COURT: Yeah. I -- I'm not inclined to
13 be taking any extras. Uh, Mr. Fremgen?

14 ATTORNEY FREMGEN: Judge, I can't point
15 to any bias, but I would certainly think that
16 this would -- significant inconvenience, and I
17 respect the fact that we're -- we're bringing
18 this jury from another county, and I -- I -- I
19 don't know if it's necessarily an economic
20 hardship either, but I -- I think, from a
21 convenience standpoint, it would be fair to let
22 this juror, uh, be excused.

23 THE COURT: Well, the Court has some
24 reservations about how devoted, given what he
25 described his project as, his -- his, uh,

1 participation in the matter could be, and it will
2 excuse him for cause. Next juror.

3 (Wherein juror is escorted out.)

4 JUDICIAL ASSISTANT: This is Juror 75,
5 Beverly Blankenship.

6 THE COURT: Be seated, Ms. Blankenship.
7 Good afternoon.

8 JUROR BLANKENSHIP: Good afternoon.

9 VOIR DIRE EXAMINATION

10 BY THE COURT:

11 Q All right. This is individual voir dire. I
12 described it a bit this morning in my, uh,
13 remarks to the jury. Uh, I'm going to ask you
14 some questions, and then counsel may or may not
15 have some follow-up questions.

16 This case, State vs. Brendan Dassey, has
17 received a substantial amount of publicity. Have
18 you heard anything about this case?

19 A Minimal.

20 Q Uh, from what source did you hear whatever it is
21 you heard?

22 A I -- I don't -- I don't know any of details of it. I
23 didn't read it in the paper. I didn't see it on TV.

24 Um --

25 Q So there --

1 A It would have been word of mouth.

2 Q So there's nothing substantial that sticks in
3 your mind about the case other than the name,
4 perhaps?

5 A Not even the name, other than from what I had
6 received from you.

7 Q All right. So have you formed any opinion as to
8 this defendant's guilt or innocence?

9 A I have not.

10 Q Have you discussed this case with anyone?

11 A No.

12 Q Have you had a family member or a friend who was
13 killed accidentally or otherwise?

14 A No.

15 Q Have you, a family member, or a close friend,
16 ever killed anyone accidentally or otherwise?

17 A No.

18 Q Have you, or has any close friend, or relative,
19 ever been the victim of or witness to any kind of
20 crime, whether it was reported to law enforcement
21 or not?

22 A No.

23 Q Uh, specifically, I'll narrow it to sexual
24 assaults. Uh, have you or a close relative ever
25 been the victim of a sexual assault?

1 A No.

2 Q Have you ever been arrested or charged with a
3 crime?

4 A No.

5 Q Has any close friend or relative ever been
6 arrested or charged with a crime of which you're
7 aware?

8 A No.

9 Q If you're selected as a juror in this matter, you
10 will be instructed that Brendan Dassey is
11 presumed innocent and that he cannot be found
12 guilty of any offense, unless and until the State
13 had proven each element of each offense beyond a
14 reasonable doubt. If you were selected and that
15 instruction were given you, could you follow it?

16 A Yes.

17 Q Likewise, another instruction, if you were
18 selected at a -- as a juror, would relate to his
19 constitutional right not to testify in this case,
20 and that if he decides not to testify, you cannot
21 hold that against him. Rather, you must base
22 your decision solely on the evidence introduced
23 at trial. If you were selected as a juror in
24 this case, could you follow that instruction?

25 A Yes.

1 Q All right.

2 THE COURT: Mr. Fallon?

3 ATTORNEY FALLON: No questions.

4 THE COURT: Mr. Fremgen?

5 **VOIR DIRE EXAMINATION**

6 BY ATTORNEY FREMGEN:

7 Q The only question I have, uh, Ms. Blankenship,
8 you mention in your questionnaire that you had
9 some concerns about family obligations with your
10 children?

11 A Well, I just have three children who are very active,
12 and my husband travels periodically.

13 Q Do you -- would you be able to obtain, or have
14 you been able to obtain, some sort of, um --

15 A I have family and -- I -- I mean, I have a network
16 underneath me that could certainly --

17 Q So that --

18 A -- fill those obligations.

19 Q That won't take away your attention during the
20 trial knowing that you won't be able to be there
21 to offer whatever help and support of your kids?

22 A No, because I know that there's a network underneath
23 me that would be able to do that.

24 Q That's fine. Thank you.

25 THE COURT: All right. Thank you. You may

1 step down. Uh, just join the judicial assistant,
2 wait in the anteroom for just a second.

3 (Wherein juror is escorted out.)

4 THE COURT: Any motions?

5 ATTORNEY FALLON: No.

6 ATTORNEY FREMGEN: No.

7 THE COURT: She will be seated. Next
8 juror, please.

9 JUDICIAL ASSISTANT: This is Robert
10 Covington, number 77.

11 THE COURT: Uh, good afternoon,
12 Mr. Covington.

13 JUROR COVINGTON: Good afternoon, sir.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q I talked a bit this morning about something
17 called individual voir dire. This is individual
18 voir dire. I'm going to ask you some questions,
19 and after I'm done asking you those questions,
20 the counsel out here may or may not have some
21 follow-up questions. You understand?

22 A Yes, sir.

23 Q Have you been able to hear me right now?

24 A Yes.

25 Q Have you had any problem at all?

1 A Um, not you, but I do have a problem with hearing.

2 Q That's why I'm asking. In your questionnaire,

3 you -- you talk about hearing loss, and -- and

4 I'm wondering, uh, if you have a problem hearing

5 me this afternoon?

6 A No, I don't have no problem.

7 Q Did you have any problem in the courtroom this

8 morning hearing -- hearing me?

9 A No, I didn't have no problem hearing you in the

10 courtroom, but I have a problem hearing her. She got

11 a -- a low tone voice. Right.

12 Q Okay. Okay. All right. Um, this case, the

13 State of Wisconsin vs. Brendan Dassey, has

14 received a lot of publicity. Have you heard

15 anything about it?

16 A Well, uh, I heard a little about the, uh -- his

17 uncle, and then they had it in the paper yesterday.

18 Q All right. So I -- We'll do this in -- in -- in

19 two questions. You've heard about his uncle,

20 Steven Avery?

21 A Right.

22 Q Have you heard anything about Brendan Dassey?

23 A Not until yesterday. I was reading the paper

24 yesterday and it was in the paper.

25 Q You saw something in the paper yesterday?

1 A Yes.

2 Q Based on what you saw in the paper, have you
3 formed any opinion as to wit -- wit -- as to
4 whether Mr. Dassey is guilty or innocent?

5 A No, sir.

6 Q Have you discussed this case with anyone?

7 A No.

8 Q Have you had a family member or a friend who was
9 killed or -- uh, either accidentally or
10 otherwise?

11 A No.

12 Q Have you, a family member, or a close friend,
13 ever killed anyone accidentally or otherwise?

14 A No.

15 Q Uh, if you're called upon to serve as a juror in
16 this matter, can you disregard anything you may
17 have heard, uh, or read in the media, or from any
18 source, and decide the case based only on the
19 evidence that is before you?

20 A Yes.

21 Q Have you, or any close rel -- friend, or
22 relative, ever been the victim of, a witness to,
23 any kind of crime, whether it was reported to the
24 law enforcement or not?

25 A No.

1 Q Uh, specifically, have you, or a close friend, or
2 relative, been the victim of a sexual assault?

3 A No.

4 Q Have you, a close friend, or family member, ever
5 been arrested?

6 A No.

7 Q Uh, ever charged with a crime?

8 A No.

9 Q If you're selected as a -- a juror, you will be
10 instructed that Brendan Dassey is presumed
11 innocent and that he cannot be found guilty of
12 any offense, unless and until the State has
13 proven each element of each offense beyond a
14 reasonable doubt. Could you follow that
15 instruction?

16 A Yes.

17 Q There will be an additional instruction that will
18 say that Mr. Dassey has a constitutional right
19 not to testify in this case, and that if he
20 decides not to testify, you cannot hold that
21 against him. Rather, you must base your decision
22 solely on the evidence introduced at trial.
23 Could you follow that instruction?

24 A Yes.

25 THE COURT: Mr. Fallon?

1 ATTORNEY FALLON: Yes, thank you. Um,
2 couple of questions.

3 VOIR DIRE EXAMINATION

4 BY ATTORNEY FALLON:

5 Q Uh, good afternoon, Mr. Covington. Um, I see
6 from the questionnaire you've had an opportunity
7 to serve our country in Vietnam?

8 A Uh, could you speak louder, please? I can't --

9 Q All right. You're having a little hard time
10 hearing me?

11 THE COURT: That mike doesn't seem to be
12 coming through the --

13 ATTORNEY FALLON: Really?

14 THE COURT: -- speaker system all that
15 well.

16 Q (By Attorney Fallon) I see from the
17 questionnaire you had an opportunity to serve in
18 Vietnam?

19 A Yes.

20 Q Is there anything about your service, uh, in
21 Vietnam, um, that makes you wonder whether you
22 would be able to, uh, fairly and impartially be a
23 juror in this case?

24 A No.

25 Q Okay. Did you see any action in Vietnam?

1 A Yes. I was regular infantry soldier, and I was right
2 out in the woods.

3 Q All right. Um, is that where you may have
4 sustained some hearing loss?

5 A I don't know where I lost it at. Uh, in 1976 it
6 started to showing up that I had a hearing loss and
7 it was (unintelligible), you know, and it start to
8 getting a little worse and worse down the line.

9 Q Okay. And you estimate a -- a 20 percent loss at
10 this time?

11 A Uh, something like 20 percent, uh, 30 percent right
12 now. I just went to the VA Hospital and had it done
13 and it's right around, uh, 30 percent. But when I
14 got it done, it was around 20 percent. So it
15 deteriorated just a small amount now.

16 Q It -- it went from 30 to 20 percent or from 20 to
17 30?

18 A It went from -- I was about 20 when I got out of the
19 military, then it went to about 30 percent.

20 Q Okay. Um -- All right. Now, um, I -- I'm a
21 little confused by your answer to one question.
22 The Court asked you if you've ever been accused
23 or arrested for a crime, um, but you have been
24 arrested for a drunk driving; is that correct?

25 A I wasn't -- wasn't arrested, but I got a drunk

1 driving. Yes.

2 Q Okay. And, um, was that on two occasions or just
3 one?

4 A Say again, please?

5 Q Was that on two occasions or just one occasion?

6 A On two occasions. Uh --

7 Q Okay.

8 A Let me explain how it happened now. One occasion, I
9 left work in the morning. I went to sleep by
10 relative's house, and they called the police, and we
11 got in a big confrontation right there. And I went
12 down, but I didn't blow positive, but I still got a
13 DUI.

14 The other case, a guy asked me to drink
15 some alcohol with him, and when I got in my car
16 to leave, he called the police on me. When I got
17 to work, (unintelligible) parking lot, the police
18 was sitting there waiting on me to come in there.
19 So, uh, well, if you have a couple of beers right
20 now you're going -- you're going to blow
21 positive. So, uh...

22 Q Okay. On -- on that second offense, did you have
23 to serve time in -- in the county jail?

24 A Say it again?

25 Q On -- on that second offense, did you have -- did

1 you have to serve time in the county jail?

2 A I didn't go to jail.

3 THE COURT: Any further questions?

4 ATTORNEY FALLON: No.

5 THE COURT: Mr. Fremgen, anything?

6 **VOIR DIRE EXAMINATION**

7 BY ATTORNEY FREMGEN:

8 Q Maybe just follow up on one question, Mr.
9 Covington?

10 A Sure.

11 Q If you were having any trouble hearing witnesses,
12 or the attorneys, or even the Judge in the trial,
13 would you have any problem stepping up or raising
14 your hand indicating that you can't hear what's
15 going on?

16 A Uh, not where I work at is one thing, but, uh, when I
17 was in military, I was going to school and I did have
18 some problems with some of the instructors that was
19 going on and it's mostly females with a very keen
20 voice. I can't pick it up that well.

21 Q So if that happens in the trial, you're willing
22 to tell us that you can't hear?

23 A Well, it -- it all depends on who is giving out the
24 instructions.

25 Q Sure. Great. Thank you.

1 THE COURT: Just as a matter of course, we
2 have assisted devices for people who are --
3 ATTORNEY FREMGEN: Oh.
4 THE COURT: -- hearing impaired.
5 ATTORNEY FREMGEN: Okay.
6 THE COURT: So, uh, they have them in here
7 and we -- we have them as well.
8 ATTORNEY FREMGEN: All right.
9 THE COURT: Any further questions?
10 ATTORNEY FALLON: No.
11 THE COURT: You may step down. Thank you.
12 Just go with that lady over there, please.
13 (Wherein juror is escorted out.)
14 THE COURT: Motions, if any?
15 ATTORNEY FALLON: Well, once again, I find
16 myself in a no-win situation. Um, in answer to
17 question 40 on the questionnaire, have you ever been
18 a suspect in, arrested, or charged with a criminal
19 offense, admittedly, that's somewhat problematic.
20 He answered, no. He answered no to your question.
21 But according to the information I have on a Robert
22 E. Covington, uh, born 7/22/42, this gentleman has
23 been convicted of, uh, two drunk drivings. One in
24 '97 and one in '98.
25 Um, and I -- I'm trying to sit here

1 thinking of a situation in which a second offense
2 would not be a crime and which not -- which would
3 not result in time in jail, and I can't think of
4 it.

5 ATTORNEY FREMGEN: Well, I can think of
6 one. I'm sorry.

7 ATTORNEY FALLON: Go ahead.

8 ATTORNEY FREMGEN: Well, because I've
9 actually represented people in that situation where
10 the prosecuting office didn't know about the prior,
11 and charged him with a first, and D.O.T. still lists
12 it as a second. I mean, that could be the answer,
13 but I don't know that without Mr. Covington
14 answering any more questions.

15 THE COURT: And I can't remember when the
16 mandatory time in jail became part of second offense
17 OWI.

18 ATTORNEY FREMGEN: Oh, it was well before
19 that.

20 THE COURT: Was it?

21 ATTORNEY FALLON: It was well before '97.

22 ATTORNEY FREMGEN: Yeah.

23 THE COURT: All right. Well, based on
24 that, uh, Mr. Fallon, are you -- you moving what?

25 ATTORNEY FALLON: I -- I -- I'm going to

1 move that he be struck for cause. And I -- I'm --
2 because I'm also concerned about the hearing thing.
3 I understand you want -- you have devices, but I
4 didn't think that I was being that soft in my
5 follow-up questions, and he was clearly having a
6 difficult time hearing me, and I am concerned about
7 the honesty of the answer.

8 I mean, the -- the whole point of this
9 questionnaire is to, um, uh -- to elicit honest
10 responses, and -- and have this, uh -- an honest
11 dialogue, especially in a, uh, more close setting
12 like this. How can we trust the rest of the
13 answers on the questionnaire?

14 THE COURT: Mr. Fremgen?

15 ATTORNEY FREMGEN: Judge, uh, well, I -- I
16 would object. Essentially, I -- I don't think that
17 there is any of the normally, uh, recognized biases,
18 number one.

19 Uh, number two, I understand
20 Mr. Fallon's concern, but I don't think that,
21 necessarily, this juror has answered any
22 questions falsely. When asked about being
23 arrested, he said he wasn't arrested.

24 Now, I -- maybe there should have been
25 further followup with what it is he considers to

1 be arrested. You know, being pulled over versus
2 going to the jail and being booked, uh, getting a
3 ticket versus the -- the formal process of -- of,
4 a -- of a normal arrest.

5 And the other, I -- I think the
6 Americans with Disabilities Act would certainly
7 not appreciate us striking someone simply for
8 having a 30 percent hearing loss, and I -- and
9 I -- since the Court does have, uh, equipment
10 that can deal with that, I don't think that,
11 necessarily, should be a reason.

12 ATTORNEY FALLON: I would note there is a
13 year-and-a-half between offenses. So it's -- I --
14 I -- I'm troubled by --

15 ATTORNEY EDELSTEIN: It may have been
16 the first one was set aside. (Inaudible.)

17 THE COURT: Yeah. Well, here, I -- I've --
18 I've heard the discussion of counsel. I'm not going
19 to excuse this --

20 ATTORNEY FREMGEN: All right.

21 THE COURT: -- juror for cause. Uh,
22 the, uh, explanations he offered, uh, don't
23 suggest to me any bias. He may have been
24 mistaken, uh, inadvertently, advertently. But
25 nonetheless, I don't think it rises to the level

1 that he should be dismissed for cause and I won't
2 do it. Next juror.

3 ATTORNEY FALLON: Just for the record, we
4 will, uh, investigate further. We may renew that
5 motion later on.

6 JUDICIAL ASSISTANT: Juror No. 80,
7 Cynthia Edge.

8 THE COURT: Good afternoon.

9 JUROR EDGE: Good afternoon.

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Uh, I'm going to ask you a few questions as part
13 of this individual voir dire, and counsel may
14 have some follow-up questions. This case, the
15 State vs. Brendan Dassey, has received a lot of
16 publicity. Have you heard anything about it?

17 A Yeah.

18 Q From what sources have you heard things about it?

19 A Um, newspaper articles.

20 Q Anything on TV or the internet?

21 A Not really. No, not on the internet.

22 Q Just newspaper articles?

23 A Yeah.

24 Q Based on what you have read in newspaper
25 articles, have you formed any opinions about the

1 guilt or innocence of this defendant?

2 A No.

3 Q Have you discussed this case with others?

4 A No.

5 Q Have you had a family member or a friend who was

6 killed accidentally or otherwise?

7 A No.

8 Q Uh, have you, a family member, or a close friend,

9 ever killed anyone accidentally or otherwise?

10 A No.

11 Q If -- if you're called upon to serve as a juror

12 in this case, can you disregard anything that you

13 may have read or heard in the media, from any

14 source, and decide the case solely based on the

15 evidence that's before you?

16 A Yes, I can.

17 Q Have you, or any close friend, or relative, ever

18 been the victim of or a witness to any kind of

19 crime, whether it was reported to law enforcement

20 or not?

21 A No.

22 Q Specifically, um, sexual assault, have you, or a

23 relative, or close friend, ever been victimized,

24 uh --

25 A No.

1 Q -- as a sexual assault? Have you, a close
2 friend, or family member, ever been arrested?

3 A No.

4 Q If you're selected as a juror, you will be
5 instructed that Brendan Dassey is presumed
6 innocent and that he cannot be found guilty of
7 any offense, unless and until the State has
8 proved each element of every offense beyond a
9 reasonable doubt. Could you follow this
10 instruction?

11 A Yes, I can.

12 Q There will be another instruction, if you're
13 selected as a juror, that Mr. Dassey has a
14 constitutional right not to testify, and that if
15 he decides not to testify, you cannot hold that
16 him. Rather, you must base your decision solely
17 on the evidence offered at trial. Can you follow
18 that instruction?

19 A Yes, I can.

20 THE COURT: Mr. Fallon?

21 ATTORNEY FALLON: No questions.

22 THE COURT: Mr. Fremgen?

23 ATTORNEY FREMGEN: No questions.

24 THE COURT: Thank you. You may step down.
25 (Wherein juror is escorted out.)

1 THE COURT: Any motions?

2 ATTORNEY FALLON: None.

3 ATTORNEY FREMGEN: None.

4 THE COURT: She will be seated. Next
5 person.

6 JUDICIAL ASSISTANT: Juror No. 83, Larry
7 Thornton.

8 THE COURT: Hi, Mr. Thornton, have a seat
9 if you would, please.

10 JUROR THORNTON: Thank you, Your Honor.

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q I talked a little bit about individual voir dire
14 this morning in some general remarks to the jury.
15 That's what this is now. I'm going to ask you
16 some questions and counsel at counsel table may
17 have some follow-up questions of you.

18 This case, State vs. Brendan Dassey, has
19 received a significant amount of publicity. Have
20 you heard anything about it?

21 A Yes.

22 Q From what source did you hear?

23 A Well, television, newspapers.

24 Q Both those sources?

25 A Yes.

1 Q Based on what you have heard, have you formed any
2 opinion of guilt or innocence with respect to
3 Mr. Dassey?
4 A Not really.
5 Q Does "not really" mean no?
6 A No.
7 Q All right. Have you discussed this case with
8 anyone?
9 A No.
10 Q Have you had a family member or a friend who was
11 killed accidentally or otherwise?
12 A No.
13 Q Have you, a family member, or a close friend,
14 ever killed anyone accidentally or otherwise?
15 A No.
16 Q If you're called upon to serve as a juror in this
17 case, can you disregard anything you may have
18 heard or read in the media, or from any other
19 source, and decide the case based solely on the
20 evidence produced in court?
21 A Sure.
22 Q Have you, or has any close friend, or relative,
23 ever been the victim of or witness to any kind of
24 crime, whether it was reported to the law
25 enforcement authorities or not?

1 A No.

2 Q Specifically, have you had a close friend or
3 relative, uh, who has been a victim of a sexual
4 assault?

5 A No.

6 Q Have you, or a close friend, or family member,
7 ever been arrested?

8 A My son was arrested once.

9 Q How long ago?

10 ATTORNEY FALLON: Sorry, I could not -- I
11 could not hear that answer.

12 THE COURT: All right.

13 JUROR THORNTON: I said my son was
14 arrested once for DWI.

15 Q (By the Court) For driving while under the
16 influence?

17 A Yes.

18 Q Uh, has that affected your, uh -- your attitude
19 toward law enforcement agencies either positively
20 or negatively?

21 A No.

22 Q If you are selected as a juror in this case, you
23 will be instructed that Mr. Dassey is presumed
24 innocent and that he cannot be found guilty of
25 any offense, unless and until the State has

1 proven each element of each offense beyond a
2 reasonable doubt. Could you follow that
3 instruction?

4 A Yes.

5 Q Uh, likewise, you would be instructed that
6 Mr. Dassey has a constitutional right not to
7 testify in this case, and that if he decides not
8 to testify, you cannot hold that against him.
9 Rather, you must base your decision solely on the
10 evidence introduced at trial. Could you follow
11 that instruction as well?

12 A Yes, sir.

13 THE COURT: Mr. Fallon.

14 ATTORNEY FALLON: Just one moment, Judge.
15 I have just have one, um, question.

16 VOIR DIRE EXAMINATION

17 BY MR. FALLON:

18 Q Mr. Thornton, you indicated one of your hobbies
19 is to, uh, go up north. Are you a hunter?

20 A No.

21 Q Um, where up north do you, uh, vacation?

22 A Post Lake. Elcho. Pickerel.

23 Q I'm sorry?

24 A Post Lake. Pickerel.

25 Q Post Lake. Is that Antigo County? Uh, I mean,

1 uh, Langlade County?

2 A Yes.

3 Q All right. That's all I have. Thanks.

4 THE COURT: Mr. Fremgen, anything?

5 VOIR DIRE EXAMINATION

6 BY ATTORNEY FREMGEN:

7 Q Uh, Mr. Thornton, you indicated your son had been
8 arrested for OWI once?

9 A Yes.

10 Q Was he convicted of that crime also?

11 A Well, he -- Yes.

12 THE COURT: Well, I -- I don't know that it
13 was --

14 JUROR THORNTON: It wasn't a crime.

15 THE COURT: Yeah. It wasn't a cri -- I
16 don't know that it's a crime.

17 ATTORNEY FREMGEN: I -- I said the
18 offense.

19 THE COURT: You said "crime".

20 ATTORNEY FREMGEN: Oh, did I? I'm
21 sorry.

22 Q (By Attorney Fremgen) I meant offense.

23 A Okay.

24 Q Uh, do you think that that was an appropriate
25 conviction based upon what you know or what he

1 might have shared with you?

2 A No. It was appropriate. I didn't have any problem
3 with it.

4 ATTORNEY FREMGEN: Nothing else.

5 THE COURT: Thanks, Mr. Thornton. You may
6 step down and go with the judicial assistant,
7 please.

8 (Wherein juror is escorted out.)

9 THE COURT: Any motions, gentlemen?

10 ATTORNEY FALLON: None.

11 ATTORNEY FREMGEN: None.

12 THE COURT: All right. He'll be seated.

13 Uh, next juror.

14 JUDICIAL ASSISTANT: This is Juror 85,
15 Heidi Anderson.

16 THE COURT: Hi, Ms. Anderson, have a chair.

17 THE WITNESS: Thank you.

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q Uh, this is individual voir dire. I talked a
21 little bit about it this morning.

22 A Um-hmm.

23 Q I'm going to ask you some questions. When I'm
24 done ask -- asking you questions, counsel may or
25 may not have some follow-up questions, okay?

1 A Okay.

2 Q This case, State vs. Brendan Dassey, has received
3 a lot of publicity. Have you heard anything
4 about it?

5 A Honestly, no, not really.

6 Q All right. You really know nothing about it?

7 A I leave for work at 6:30 in the morning. I work a
8 second job, so I usually don't get home until 9:30 at
9 night, and then I go straight to bed. I live alone,
10 so I don't get a newspaper because it's not worth it
11 because I'm not home. So the little news I get is on
12 the radio and that's usually puff pieces.

13 Q And so you -- and you haven't heard anything on
14 the radio about this?

15 A No.

16 Q All right. You've never discussed this case with
17 anyone, have you?

18 A No, I have not.

19 Q Have you had a family member or a friend who was
20 killed accidentally or otherwise?

21 A I had a cousin, before I was born, who was murdered,
22 but, like, I never knew him and I have no idea of
23 what the proceedings were done --

24 Q Was --

25 A -- with him.

1 Q I'm sorry. Go on.

2 A He was 17 years older than me. So he was running
3 away from home, and I don't know what happened. The
4 exact story. I just heard in the past.

5 Q So are you aware if someone was charged with a
6 crime or not?

7 A Honestly, I'm not aware. No.

8 Q Have you, a family member, or a close friend,
9 ever killed anyone accidentally or otherwise?

10 A No.

11 Q Have you, a family member, close friend, or
12 relative, ever been the victim of or a witness to
13 any kind of crime, and I'm excluding here the --
14 the one that you've already mentioned, whether it
15 was reported to law enforcement or not?

16 A Other than, like, traffic crimes, you know, like car
17 accidents, no.

18 Q Were some of you victims of, uh, car accidents?

19 A I was hit once in my car on my way to college, um,
20 and then another time I was walking and I was hit by
21 a car. Neither case went to court. You know, I went
22 to the hospital, got my injuries taken care of, and
23 that was that.

24 Q Has that experience, or those experiences, have
25 any effect on your attitude toward law

1 enforcement, positive or negative?

2 A Really, no. I mean, I felt they did their job quite
3 adequately and everything got handled so...

4 Q Uh, have you, or a close friend, or relative,
5 ever been the victim of a sexual assault?

6 A No.

7 Q Have you, a close friend, or family member, ever
8 been arrested?

9 A Not that I'm aware of. No.

10 Q If you were selected as a juror in this case,
11 you -- you would be instructed that Mr. Dassey is
12 presumed innocent and that he cannot be found
13 guilty of any offense, unless and until the State
14 has proven each element of each offense beyond a
15 reasonable doubt. As a juror, could you follow
16 those instructions?

17 A Yes.

18 Q Likewise, uh, if you were selected as a juror,
19 you would be instructed that Mr. Dassey has a
20 constitutional right not to testify in this case,
21 and that if he decides not to testify, you cannot
22 hold that against him. Rather, you must base
23 your decision solely on the evidence introduced
24 at trial. Could you follow that instruction as
25 well?

1 A Of course.

2 Q All right.

3 THE COURT: Mr. Fallon?

4 ATTORNEY FALLON: No questions.

5 THE COURT: Mr. Fremgen?

6 ATTORNEY FREMGEN: No questions.

7 THE COURT: You may step down. Thank you.

8 JUROR ANDERSON: Thank you.

9 (Wherein juror is escorted out.)

10 THE COURT: Motions, if any?

11 ATTORNEY FALLON: None.

12 ATTORNEY FREMGEN: None.

13 THE COURT: All right. She will be seated.

14 Next juror.

15 JUDICIAL ASSISTANT: Juror No. 86,

16 Nicholas Drewsen.

17 THE COURT: Good afternoon, Mr. Drewsen.

18 **VOIR DIRE EXAMINATION**

19 BY THE COURT:

20 Q This is individual voir dire. You heard me talk

21 a little bit about it this morning in the

22 courtroom. I'm going to ask you a few questions,

23 and then counsel may or may not have fol --

24 followup to -- to those questions. Excuse me.

25 Uh, this case, State vs. Brendan Dassey,

1 has received a lot of publicity. Have you heard
2 anything about it?

3 A Yes.

4 Q From what source did you learn whatever it is
5 that you've heard?

6 A Newspapers and, uh, TV.

7 Q Based on what you've read and what you've heard,
8 have you formed any opinions about the guilt or
9 innocence of Mr. Dassey?

10 A No.

11 Q Have you discussed this case with other people?

12 A No.

13 Q If you are called to serve as a juror in this
14 case, can you disregard anything you may have
15 read or heard in the media, or from any other
16 source, and decide this case based only on the
17 evidence produced in court?

18 A I believe so.

19 Q Uh, have you had a family member or a friend who
20 was killed accidentally or otherwise?

21 A No.

22 Q Uh, have you, a family member, or a close friend,
23 ever killed anyone accidentally or otherwise?

24 A No.

25 Q Have you, or close friend, or relative, ever been

1 the victim of or a witness to any kind of crime,
2 whether it was reported to law enforcement or
3 not?

4 A No.

5 Q Specifically, uh, have -- do you have any close
6 friends or relatives who's been the victim of
7 sexual assault?

8 A No.

9 Q Have you, a close family member, or friend, uh,
10 ever been arrested?

11 A No.

12 Q If you're selected as a juror in this case, you
13 will be instructed that the defendant, Brendan
14 Dassey, is presumed innocent and that he cannot
15 be found guilty of any offense, unless and until
16 the State has proved each element of each offense
17 beyond a reasonable doubt. Could you follow that
18 instruction?

19 A Yes.

20 Q Uh, you will also be instructed that Brendan
21 Dassey has a constitutional right not to testify
22 in this case, and that if he decides not to
23 testify, you cannot hold that against him. But,
24 rather, you have to base your decision solely on
25 the evidence introduced at trial. Can you follow

1 that instruction as well?

2 A Yes.

3 THE COURT: Mr. Fallon?

4 ATTORNEY FALLON: I have no questions.

5 THE COURT: Mr. Fremgen?

6 ATTORNEY FREMGEN: Uh, no questions.

7 THE COURT: Thank you. You may step down.

8 (Wherein juror is escorted out.)

9 THE COURT: Any motions, gentlemen?

10 ATTORNEY FALLON: None.

11 ATTORNEY FREMGEN: No, Judge.

12 THE COURT: All right. Mr. Drewsen may be
13 seated. Uh, next juror.

14 JUDICIAL ASSISTANT: Juror 112, Renee
15 Schmitt.

16 THE COURT: Good afternoon, Ms. Schmitt.
17 Be seated if you would, please.

18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q Uh, this is individual voir dire. You heard me
21 talk about it a little bit this morning. I'm
22 going to ask you some questions. Counsel may or
23 may not have followup to those questions.

24 In this case, the State vs. Brendan
25 Dassey, has generated a substantial amount of

1 publicity. What, if anything, have you heard
2 about it?

3 A I haven't heard anything. I never even heard the
4 first -- his name before I got the juror
5 questionnaire.

6 Q So up until that time you were entirely
7 unfamiliar with it?

8 A Completely unfamiliar.

9 Q All right. So is it fair to say -- Well, have
10 you formed any opinions about his guilt or
11 innocence?

12 A No, I -- I -- no idea about anything.

13 Q Uh, have you had a family member or a friend who
14 was killed accidentally or otherwise?

15 A No.

16 Q Uh, have you, a family member, or a close friend,
17 ever killed anyone accidentally or otherwise?

18 A No.

19 Q Have you, or a close friend, relative, or family
20 member, ever been the victim of or a witness to
21 any kind of crime, whether it was reported to law
22 enforcement authorities or not?

23 A No.

24 Q Specifically, have you, close friend, or
25 relative, ever been sexually assaulted?

1 A No.

2 Q Have you, close family member, or friend, ever
3 been arrested?

4 A No.

5 Q Charged with any crime?

6 A No.

7 Q If you're selected as a juror in this case, you
8 will be instructed that Brendan Dassey's presumed
9 innocent and that he cannot be found guilty of
10 any offense, unless and until the State has
11 proved each element of each offense beyond a
12 reasonable doubt. If you're selected as a juror,
13 can you follow that instruction?

14 A Yes.

15 Q Uh, there will be an additional instruction which
16 will tell you that Mr. Dassey has a
17 constitutional right not to testify in this case,
18 and if he decides not to testify, you cannot hold
19 that against him. Rather, you must base your
20 decision solely on the evidence introduced at
21 trial. Can you follow that instruction?

22 A Yes, I can.

23 THE COURT: Mr. Fallon, any questions?

24 ATTORNEY FALLON: None.

25 THE COURT: Mr. Fremgen?

1 ATTORNEY FREMGEN: No.

2 THE COURT: Thank you. You may step down.
3 Go with the judicial assistant.

4 (Wherein juror is escorted out.)

5 THE COURT: Motions, if any?

6 ATTORNEY FREMGEN: No.

7 THE COURT: She will be seated. Next
8 juror.

9 JUDICIAL ASSISTANT: Juror 120. Juror
10 Michelle Hayman Ware.

11 THE COURT: Hi.

12 JUROR HAYMAN WARE: Hi.

13 THE COURT: Are you -- Do you want to keep
14 your jacket on or take it off?

15 JUROR HEIMEN WARE: Keep it on.

16 THE COURT: All right.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q Uh, this is individual voir dire. I talked a
20 little bit about it this morning. I'm going to
21 ask you some questions. Counsel may or may not
22 have some follow-up questions.

23 Uh, this case, the State vs. Brendan
24 Dassey, has received a lot of publicity. What,
25 if anything, have you heard about it?

1 A Um, I've seen a couple newscasts on it, and I -- I
2 don't think I read very much in the newspaper, but
3 I've seen it on the news.

4 Q Based on what you've seen on the news, have you
5 formed any opinions about the guilt or innocence
6 of Mr. Dassey?

7 A Um, no.

8 Q Have you discussed the case with anyone else?

9 A No.

10 Q Have you had a family member or a friend who was
11 killed accidentally or otherwise?

12 A No.

13 Q Uh, have you, a family member, or a close friend,
14 ever killed anyone accidentally or otherwise?

15 A No.

16 Q If you're called upon to serve on this jury, can
17 you disregard anything you may have heard or read
18 in the media, or from any other source, and
19 decide the case based solely on the evidence that
20 you hear in court?

21 A Yes.

22 Q Have you, or any close friend, or relative, been
23 the victim of or witness to any kind of crime,
24 whether it was reported to law enforcement
25 authorities or not?

1 A No.

2 Q Uh, specifically, have you, or any good friend,
3 or a relative, been the victim of a sexual
4 assault?

5 A No.

6 Q Have you, a -- a close friend, or family member,
7 ever been charged with a crime?

8 A No.

9 Q Arrested for anything?

10 A No.

11 Q If you're selected as a juror in this case,
12 you'll be instructed that Mr. Dassey is presumed
13 innocent and that he cannot be found guilty of
14 any offense, unless and until the State has
15 proven every element of each offense beyond a
16 reasonable doubt. If you were selected as a
17 juror in this case, would you be able to follow
18 that instruction?

19 A Yes.

20 Q There will be an additional instruction that will
21 tell you that Mr. Dassey has a constitutional
22 right not to testify in this case, and that if he
23 decides not to testify, you cannot hold that
24 against him. Rather, you must base your decision
25 solely on the evidence introduced at trial. As a

1 juror, could you follow that instruction?

2 A Yes.

3 THE COURT: Mr. Fallon, any questions?

4 ATTORNEY FALLON: No.

5 THE COURT: Mr. Fremgen.

6 ATTORNEY FREMGEN: Just a few.

7 **VOIR DIRE EXAMINATION**

8 BY ATTORNEY FREMGEN:

9 Q Um, I'm sorry, do you go by Hayman Ware, or Ware?

10 A Either one is fine.

11 Q Okay. Miss -- Mrs. Ware, you're -- you noted in
12 your questionnaire that your husband's car has
13 been broken into before?

14 A Um, yeah. I'm trying to think. Yes. Yes.

15 Q And was something taken from that vehicle?

16 A Yes. That was prior to me knowing him.

17 Q Oh. Okay. So it wasn't anything that happened
18 during your relationship?

19 A No.

20 Q Now, were you aware of the Avery case? In your
21 questionnaire, you indicated you were aware of
22 the verdict?

23 A Yes.

24 Q Were you aware of any of the details in that
25 case?

1 A Um, not -- No, not really. Just what I saw on the
2 news.

3 Q Did you -- Okay. Did you ever discuss that case
4 with your husband who happens to be a police
5 officer?

6 A No.

7 Q You indicated in your questionnaire that you work
8 closely with the District Attorney's Office?

9 A Yes.

10 Q Do you feel that that relationship -- Obviously,
11 you don't work with Mr. Fallon or Mr. --

12 A Right.

13 Q -- Kratz. Do you feel that that relationship
14 with prosecutors would, uh, impact on your
15 ability to be fair to both sides?

16 A No.

17 Q What -- what kind of work, uh, as -- You're a
18 social worker; correct?

19 A Correct.

20 Q What's the interaction between the D.A.'s Office
21 that you're usually involved in?

22 A Um, I do child welfare, so, um, my office, the Dane
23 County Department of Human Services petitions, um,
24 the court for involvement, and that petition goes
25 through the District Attorney's Office. So when

1 we're in court, um, we're often aligned with the
2 District Attorney's Office in that situation, but at
3 the same time, I also work with clients who are being
4 defended. Um, so I'm kind of on both sides of
5 things.

6 Q You -- you don't then work with, for instance,
7 juvenile delinquencies?

8 A Um, no. Actually, I -- I work with child welfare
9 stric -- strictly right now.

10 Q Thank you.

11 ATTORNEY FREMGEN: Nothing else.

12 THE COURT: Mr. Fallon?

13 ATTORNEY FALLON: No.

14 THE COURT: Thank you. You may step down.

15 (Wherein juror is escorted out.)

16 THE COURT: Motions, gentlemen, if any?

17 ATTORNEY FALLON: None.

18 ATTORNEY FREMGEN: None.

19 THE COURT: She will be seated. Um, next
20 juror, please.

21 JUDICIAL ASSISTANT: This is Juror 121,
22 Janeen Running.

23 THE COURT: Good afternoon, Ms. Running.

24 JUROR RUNNING: Good afternoon.

25 VOIR DIRE EXAMINATION

1 BY THE COURT:

2 Q Uh, this is individual voir dire. I talked a
3 little bit about it this morning in -- in the
4 other courtroom. I'm going to ask you a few
5 questions. Counsel may or may not have follow-up
6 questions to ask you.

7 This case, State of Wisconsin vs.
8 Brendan Dassey, has received a substantial amount
9 of publicity. What, if anything, have you heard
10 about the case?

11 A I haven't -- All I've heard is recently on the news
12 saying that the jurors were being picked and, um, you
13 know, this happening in Dane County, that type of
14 thing.

15 Q And that's really it?

16 A The more that I had heard on the news, you know, was
17 the earlier trial that took place. I really haven't
18 heard any, uh, information on this one.

19 Q And by "earlier trial" you're referring to the
20 trial of Steven Avery?

21 A Right.

22 Q Uh, based on what you, uh, have heard and,
23 apparently, that's not very much, have you formed
24 any opinions about the guilt or innocence of
25 Brendan Dassey?

1 A No.

2 Q Have you had any family member or friend who was
3 killed accidentally or otherwise?

4 A No.

5 Q Have you, a family member, or a close friend,
6 ever killed anyone accidentally or otherwise?

7 A No.

8 Q If you're called upon to serve as a juror in this
9 case, can you disregard anything you may have
10 heard, uh, or read in the media, or from any
11 other source, and decide this case based solely
12 on the evidence that's produced in court?

13 A Yes.

14 Q Have you, a close friend, or family member, ever
15 been arrested?

16 A No.

17 Q Anybody charged with a crime? Close friend,
18 family member?

19 A No.

20 Q Uh, have you, or a close friend, or a relative,
21 ever been the victim of a sexual assault?

22 A (No verbal response.)

23 Q Is that no?

24 A No.

25 Q If you're selected as a juror in this case, you

1 will be instructed that Brendan Dassey is
2 presumed innocent and that he cannot be found
3 guilty of any offense, unless and until the State
4 has proven each element of each offense beyond a
5 reasonable doubt. If you were selected as a
6 juror in this case, would you be able to follow
7 that instruction?

8 A Yes.

9 Q There would be another instruction, and that
10 would tell you that Mr. Dassey has the
11 constitutional right not to testify in this case,
12 and that if he decides not to testify, you cannot
13 hold that against him. Rather, you must base
14 your decision solely on the evidence produced at
15 trial. As a juror, would you be able to follow
16 that instruction as well?

17 A Yes.

18 THE COURT: Mr. Fallon, any questions?

19 ATTORNEY FALLON: No.

20 THE COURT: Mr. Fremgen?

21 ATTORNEY FREMGEN: No.

22 THE COURT: You may step down. Thank you.

23 (Wherein juror is escorted out.)

24 ATTORNEY FALLON: I'll make a copy of
25 this later, Judge, and --

1 THE COURT: Sure.

2 ATTORNEY FALLON: -- give the originals
3 back.

4 THE COURT: I thought we actually had an
5 extra copy, but we'll talk about that --

6 ATTORNEY FALLON: All right. I -- I --
7 I think it was left in Mr. Kratz's office, and a
8 portion of the papers are in the room here, and
9 that's why I didn't get a copy.

10 THE COURT: Any motions, gentlemen?

11 ATTORNEY FALLON: No.

12 ATTORNEY FREMGEN: No.

13 THE COURT: Next juror, please.

14 ATTORNEY FALLON: When are we planning
15 on the afternoon break, Judge?

16 THE COURT: Uh, three o'clock?

17 ATTORNEY FALLON: Good.

18 THE COURT: I -- If someone, for one
19 reason or another, has an earlier suggestion,
20 I -- Court would certainly be happy to
21 accommodate.

22 ATTORNEY FALLON: So far, the cold seems
23 to be in -- in abeyance.

24 JUDICIAL ASSISTANT: Juror No. 125, Judy
25 Orth.

1 THE COURT: Good afternoon, Ms. Orth.

2 JUROR ORTH: Hello.

3 VOIR DIRE EXAMINATION

4 BY THE COURT:

5 Q This is individual voir dire. I talked a little
6 bit about it this morning. I'm going to ask you
7 some questions. Counsel at counsel table may or
8 may not have some follow-up questions to ask of
9 you.

10 A Okay.

11 Q This case, State of Wisconsin vs. Brendan Dassey,
12 has received a substantial amount of publicity.
13 Have you heard anything about it?

14 A Just some on the news -- news and the newspapers.

15 Q No substantial amount --

16 A No.

17 Q -- of things?

18 A No. No.

19 Q Based on what you have heard, have you formed any
20 opinions about the guilt or innocence of this
21 defendant?

22 A No.

23 Q Have you discussed this case with anyone?

24 A No.

25 Q Have you had a family member or a friend who was

1 killed accidentally or otherwise?

2 A Not a direct family member, no.

3 Q Direct close friend?

4 A No, not -- not close.

5 Q All right. Have, uh, you, a family member, or a

6 close friend, ever killed anyone accidentally or

7 otherwise?

8 A No.

9 Q Have you, or any close friend, or relative, ever

10 been the victim of or witness to any kind of

11 crime, whether it was reported to law enforcement

12 or not? No?

13 A No.

14 Q Specifically, have you, or a close friend, or

15 relative, been the victim of a sexual assault?

16 A A --

17 Q Sexual assault?

18 A A friend or a family?

19 Q Yes.

20 A Yes.

21 Q And that would be a friend or which?

22 A Family.

23 Q Family member?

24 A Um-hmm.

25 Q Close family member?

1 A Yes.

2 Q Uh, was the person who perpetrated the assault
3 prosecuted?

4 A No.

5 Q Was the event ever reported to the law
6 enforcement authorities?

7 A It was reported because it -- it ended up going to,
8 um, therapy, and the therapist had to report it to
9 the authorities.

10 Q Based on what occurred, did that affect, in
11 either a positive or negative way, your attitude
12 toward law enforcement?

13 A No.

14 Q Does it give you any special kind of feeling
15 about sexual assaults in general?

16 A No.

17 Q Have you, a close friend, or family member, ever
18 been charged with a crime?

19 A No.

20 Q If you were selected as a juror in this case, you
21 will be instructed that Mr. Dassey is presumed
22 innocent and he cannot be found guilty of any
23 offense, unless and until the State has proven
24 each element of each offense beyond a reasonable
25 doubt. Could you follow that instruction?

1 A Um-hmm.
2 Q Yes?
3 A Yes.
4 Q We can't nod or say --
5 A Oh.
6 Q -- um-hmm, because she's --
7 A All right.
8 Q -- taking all of this down.
9 A Sorry.
10 Q If you're selected as a juror, you also would be
11 instructed that, uh, Mr. Dassey has a
12 constitutional right not to testify, and that if
13 he decides not to testify, you can't hold that
14 against him. Instead, you're going to have to
15 base your decision solely on the evidence
16 introduced at trial. Could you do that?
17 A Yes.

18 THE COURT: Mr. Fallon, any questions?

19 ATTORNEY FALLON: Um, just, um,
20 followup.

21 VOIR DIRE EXAMINATION

22 BY ATTORNEY FALLON:

23 Q On the assault issue, I believe I think you
24 indicated in your questionnaire that your
25 daughter was the victim?

1 A Yes.

2 Q And -- and it was a -- a nephew of yours?

3 A Yes.

4 Q Was that, um, a family decision, then, not to
5 report it and just seek intervention through
6 counseling?

7 A It was just -- it came up through, um -- my daughter
8 actually went to my sister, who told her about it,
9 and then my sister told me about what happened --

10 Q Right.

11 A -- and I felt that it was important that my daughter
12 see a therapist just to, you know, make sure nothing
13 was going on. I wanted to make sure she had the
14 openness to talk to somebody, and when I went to the
15 therapist, that's when it was reported.

16 Q Right. Because they had a legal obligation to
17 report?

18 A Correct.

19 Q All right. Did -- did you feel somehow, um --
20 did you or your family -- did you feel somehow,
21 uh, let down by the system?

22 A No.

23 Q In other words, if you wanted it reported, you
24 could have reported it yourselves but...

25 A Right. No, we weren't let down at all.

1 Q Okay.

2 A I thought she did a very good job.

3 Q All right. And, apparently, there was no, um,
4 follow-up intervention by social services or --
5 or law enforcement after it was reported?

6 A Um, we had some deputies come to the house and just
7 talk to my daughter a little bit to get more
8 information as to how severe it was.

9 Q Right.

10 A But that was it.

11 Q Okay. And do you feel that situation was handled
12 professionally?

13 A Yes.

14 Q All right. And it left you and your family with
15 no ill feelings to law enforcement for making
16 this intrusion into your family?

17 A No. No. I understood why they did it.

18 Q Okay. Oh, um -- That's it. Thanks.

19 THE COURT: Mr. Fremgen, anything?

20 VOIR DIRE EXAMINATION

21 BY ATTORNEY FREMGEN:

22 Q Um, Mrs. Orth, one of the questions that the
23 Judge asked you about that incident was whether
24 it had an impact, negatively, uh, in regards to
25 your perspec -- uh, perception of law

1 enforcement. Did it have any impact on your,
2 um -- your feelings towards people that commit
3 crimes?
4 A No. No.
5 Q Did you have -- And you said that you thought it
6 was pretty -- handled fairly and professionally?
7 A Yes.
8 Q What about -- This was your nephew that was the
9 sus -- you know, the person who did this?
10 A Correct.
11 Q Did, uh -- Do you have any hard feelings about
12 your -- about your nephew?
13 A Uh, at first, yeah. Probably for the first month or
14 so because it -- it, you know, put a dent in the
15 family for a little bit, but after that it -- things
16 got worked out. Things were fine.
17 Q So you, together as a family, worked through all
18 that?
19 A Yes.
20 Q Nothing else.

21 ATTORNEY FALLON: May I follow up that?

22 VOIR DIRE EXAMINATION

23 BY ATTORNEY FALLON:

24 Q How old was your nephew when this happened?

25 A My nephew was 14.

1 Q And your daughter was how old?
2 A She was six.
3 Q Okay. Thanks.
4 THE COURT: All right. You may step down.
5 Thank you.
6 (Wherein juror is escorted out.)
7 THE COURT: Motions, if any?
8 ATTORNEY FALLON: None.
9 ATTORNEY FREMGEN: No.
10 THE COURT: She will be seated. Next
11 juror.
12 JUDICIAL ASSISTANT: This is Juror 126,
13 Jane McGuire.
14 THE COURT: Good afternoon, Ms. McGuire.
15 JUROR MCGUIRE: Good afternoon.
16 **VOIR DIRE EXAMINATION**
17 BY THE COURT:
18 Q This is individual voir dire. I talked a little
19 bit about it this morning. I'm going to ask you
20 some questions. Counsel may or may not have some
21 follow-up questions based on your answers.
22 Um, this case, State vs. Brendan Dassey,
23 has received a substantial amount of publicity.
24 Have you heard anything about it?
25 A Yes.

1 Q Uh, from what source did you learn whatever it is
2 you heard?

3 A Uh, newspaper and TV news.

4 Q Based on what you have heard, have you formed any
5 opinions about this defendant's guilt or
6 innocence.

7 A Um, I am aware that there was a confession and then a
8 recant.

9 Q All right. Based on the fact that you're aware
10 that there was a confession and a recantation,
11 have you formed any opinions about his guilt or
12 innocence?

13 A I don't know.

14 Q All right. Have you discussed this case with
15 others?

16 A Um, only in the realm of -- of, you know, when it's
17 appeared in the news, you know, before, and then just
18 the fact I had to let my employer know that I had to
19 be gone for, you know, jury duty.

20 Q So there's no in-depth discussion with anyone
21 else?

22 A Even before I was called for jury duty, you know, in
23 passing, we had talked about the previous case. I
24 mean, that's just nature because it was a high
25 profile case.

1 Q Uh, previous case you're referring to State vs.
2 Steven Avery?
3 A Yes.
4 Q Uh, if you had formed any opinions about the
5 guilt or innocence of the defendant, could you
6 set those opinions aside and judge this case
7 solely on the evidence that's presented in court?
8 A I think so.
9 Q You believe you could do that?
10 A I think so. Yes.
11 Q You -- you understand, we're -- we're looking for
12 fair and impartial jurors?
13 A Um-hmm.
14 Q You will be instructed on the -- the law by the
15 Court, but you will be the judge of the facts as
16 a juror, you understand that?
17 A Yes.
18 Q Would you be able to render any decision as a
19 juror based on the facts that you see in court
20 and the law as the Court instructs you?
21 A Yes. I believe so.
22 Q Uh, have you had a family member or a friend who
23 was killed accidentally or otherwise?
24 A No.
25 Q Uh, have you, a family member, or a close friend,

1 ever killed anyone accidentally --

2 A No.

3 Q -- or otherwise? Have you, or has any close

4 friend of yours, ever been the victim of or a

5 witness to any kind of crime, whether it was

6 reported to law enforcement authorities or not?

7 A Yes.

8 Q And who was that?

9 A My parents recently had their, um, vehicle stolen

10 from their garage while they were home.

11 Q All right. Your parents had a car taken --

12 A Um-hmm.

13 Q -- from them; is that correct?

14 A Theft. Um-hmm.

15 Q Uh, did the police do a follow-up investigation

16 of that theft?

17 A Yes.

18 Q Anything the police do, uh, affect your attitude

19 toward them, positively, negatively?

20 A No. They did their job appropriately.

21 Q They did. All right. Have you, or a close

22 friend, or relative, ever been the victim of a

23 sexual assault?

24 A No. Not to my knowledge.

25 Q Have you, a family member, or a close friend,

1 ever been arrested?

2 A No.

3 Q Charged with a crime?

4 A No.

5 Q If you're selected as a juror in this case, you

6 will be instructed that Brendan Dassey is

7 presumed innocent and that he cannot be found

8 guilty of any offense, unless and until the State

9 has proved each element of each offense beyond a

10 reasonable doubt. Could you follow that

11 instruction?

12 A Yes.

13 Q You would also be instructed that Mr. Dassey has

14 a constitutional right not to testify if he so

15 chooses, and if he does not testify at the trial,

16 that you cannot hold that against him. Rather,

17 you would have to base your decision solely on

18 the evidence that's introduced at -- at trial.

19 Could you follow that instruction as well?

20 A Yes.

21 THE COURT: Mr. Fallon?

22 ATTORNEY FALLON: No questions.

23 THE COURT: Mr. Fremgen.

24 VOIR DIRE EXAMINATION

25 BY ATTORNEY FREMGEN:

1 Q Mrs. McGuire, when we're talking about an
2 opinion, obviously, understand we're asking you
3 if you have an opinion as to Brendan's guilt or
4 innocence now?

5 A Um-hmm.

6 Q Correct? Correct?

7 THE COURT: You have to say yes --

8 ATTORNEY FREMGEN: Sorry.

9 THE COURT: -- or no.

10 A Do I have an opinion of his guilt or innocence
11 presently? Or is that the --

12 Q (By Attorney Fremgen) Yes.

13 A -- question? I guess I would have to say, yes, I do
14 have an opinion on that.

15 Q Okay. What's that opinion?

16 A Um, because of what I have read regarding the
17 confession and -- and the recant, I -- I would say
18 I -- I formed somewhat of an opinion towards guilt.

19 Q And -- and a lot of it you just mentioned because
20 of what you've read?

21 A Correct.

22 Q Obviously, you haven't seen any evidence yet;
23 correct?

24 A Correct.

25 Q You didn't go watch any of the Steven Avery

1 trial, for instance?

2 A I've seen things in the paper, but I -- you know, I

3 didn't seek it out. I was just, you know, through

4 the normal news watching and reading the paper daily.

5 Q Sure. You weren't in attendance, though, is what

6 I'm --

7 A No. No. No.

8 Q And, obviously, because we're here picking a

9 jury, there hasn't been a trial yet for Brendan;

10 correct?

11 A Correct.

12 Q So, um, I -- I -- I think one of the questions

13 the Judge is asking about, whether you can set

14 aside the opinion and consider the evidence, is

15 you can, despite your opinion, honestly say, I

16 can presume Brendan is innocent right now and

17 I'll wait to hear what actually is introduced in

18 trial? You can do that?

19 A I don't know that I can honestly answer that I could.

20 Q So your honest answer would be you don't know?

21 A I don't know.

22 Q Okay. I have nothing else.

23 VOIR DIRE EXAMINATION

24 BY THE COURT:

25 Q Let me just follow up their followup.

1 A Um-hmm.

2 Q You've heard some things about this case and,
3 apparently, the case of Mr. Avery; correct?

4 A Correct.

5 Q What I'll ask you, and I'm -- I certainly touched
6 upon this before, is can you set aside what you
7 have heard and judge this case as a juror solely
8 on the evidence that is presented in court?

9 A Yes, I believe I could.

10 THE COURT: All right. I have nothing
11 further. You may step down. Thank you.

12 (Wherein juror is escorted out.)

13 THE COURT: Motions, if any?

14 ATTORNEY FALLON: None.

15 ATTORNEY FREMGEN: Judge, I'd, uh, ask the
16 Court to move to strike for cause. Uh, again, the
17 issue is whether she can, uh -- whether this juror
18 is unequivocally impartial. That, essentially, goes
19 to whether they can say to this Court, I am able to
20 be fair, and despite the last question by the Court,
21 I don't -- I think there was certainly equivocation,
22 especially even on the first set of the questions by
23 the Court, her answers to the question of whether
24 she had an opinion as, I don't know, and whether she
25 can set aside the opinion as, I think so, there

1 isn't a definite that, I absolutely can.

2 And as to my questions trying to get
3 more into what is the opinion, where'd she obtain
4 that opinion, and can you absolutely set that
5 aside, her answer to me was, I honestly don't
6 know, and -- and -- and again, I understand what
7 the Court was attempting to do and rehabilitate
8 the -- the juror with the last question, it
9 doesn't rehabilitate the issue of is she
10 unequivocal willing to be fair.

11 I -- I -- I shouldn't say it that way. I
12 think they're all willing to be fair. I think,
13 based upon her answers, clearly, there's
14 equivocation on that issue, and I would ask the
15 Court to strike that juror.

16 ATTORNEY FALLON: We would oppose,
17 Judge. Um, I'm not sure if Counsel is accurately
18 stating the, uh, guiding principle here,
19 because -- because I'm not sure you can have
20 anyone who's totally, absolutely, unequivocal
21 about their responses once they've actually been
22 exposed to some information, uh, in the public
23 domain, and, again, I come back to that -- the
24 comments I made earlier on, it's -- it's will you
25 decide the case on the evidence which is

1 presented.

2 I'm not concerned so much that they have
3 an opinion. I mean, most people who are informed
4 about news events have opinions on it. We all
5 have opinions. We have opinions on the war. We
6 have the opinions on -- on health. We have
7 opinions on the economy. But not -- none of us
8 are fully informed on all of those, but we're
9 open to an argument and a reason and a
10 presentation of argument, and I -- I think that's
11 all we can ask.

12 THE COURT: I -- I understand. Here,
13 Mr. Fremgen, I don't think there is a test of
14 unequivocal impartiality that -- that need be made
15 here. I think **State vs. Erickson** at 227 Wis. 2d 758
16 says exactly that, uh, and I don't believe, based on
17 what I saw here or heard here today, that I could
18 find any subjective bias either.

19 Uh, I -- the -- the objective bias would
20 go to how ingrained the opinion was. The
21 subjective bias would go to the willingness of
22 the prospective juror to, uh, react to testimony.
23 I listened to this prospective juror, and, uh,
24 while she may have heard and read, uh, matters,
25 she is -- is willing to set aside or, as she

1 said, try to set aside, and in a -- in a manner
2 that -- that I find entirely compatible with what
3 I understand to be the, uh, qualification
4 standards here.

5 Thus, I'm going to deny your motion.
6 We'll seat her. Next juror.

7 JUDICIAL ASSISTANT: Juror No. 128,
8 Tamara Lowery.

9 THE COURT: Good afternoon, Ms. Lowery.

10 JUROR LOWERY: Hello.

11 THE COURT: Feel free to take your coat
12 off and put it on the desk or keep it on.
13 However you choose.

14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q This is individual voir dire. I'm going to ask
17 you a few questions, and based on those questions
18 you may or may not have some follow-up questions
19 from counsel at, uh, those -- those tables.

20 A Okay.

21 Q Uh, this is the State of Wisconsin vs. Brendan
22 Dassey, and its received a substantial amount of
23 publicity. Have you heard anything about it?

24 A Yes.

25 Q Uh, from what source did you --

1 A Um --

2 Q -- get this information?

3 A TV.

4 Q Television?

5 A Um-hmm. Yes.

6 Q Uh, newspapers?

7 A TV.

8 Q Just TV. Based on what you have heard, have you

9 formed any opinions about the guilt or innocence

10 of Mr. Dassey?

11 A No.

12 Q Have you discussed this case with anyone?

13 A No.

14 Q Have you had a family member or a friend who was

15 killed accidentally or otherwise?

16 A No.

17 Q Have you, a family member, or a close friend,

18 ever killed anyone accidentally or otherwise?

19 A No.

20 Q If you were called to serve as a juror in this

21 matter, could you disregard anything that

22 you've -- you've, uh, heard or read in the media,

23 or from any other source, and decide the case

24 solely based on the evidence that you hear in

25 court?

1 A Yes.

2 Q Have you, or has any close friend, or rela -- or
3 relative, ever been the victim of or a witness to
4 any kind of crime, whether it was reported to law
5 enforcement authorities or not?

6 A Yes.

7 Q Who would that be, ma'am?

8 A Um, couple family members. Uh, like car accidents,
9 things like that maybe.

10 Q All right. Specifically, I'm -- I'm thinking
11 here of crimes, and car accidents may, in some
12 instances, be crimes. But, crimes? Anybody?

13 A Can you repeat that question one more time?

14 Q Sure. Have you, or any close friend, or
15 relative, ever been the victim of or a --

16 A Yes.

17 Q -- witness -- witness to any kind of crime?

18 A Um-hmm. Yes.

19 Q You have. And who is that and what kind of
20 crime?

21 A Um, I had a battery, um, with a former -- former
22 spouse kind of thing. Yeah. Like a domestic --

23 Q And --

24 A -- victim of a domestic. Me. Myself.

25 Q You were the victim of domestic --

1 A Um-hmm.

2 Q And this was an ex-husband?

3 A Yeah.

4 Q Was he arrested?

5 A Yes.

6 Q Charged?

7 A I'm not sure about that, but -- I don't know.

8 Q Was he punished?

9 A Uh, I'm not really sure because he was already on
10 probation so I'm not really sure.

11 Q Okay. He'd been in the system?

12 A Yes.

13 Q Was there anything about that that changed
14 your -- or -- or affected your attitude, either
15 positively or negatively, uh, toward the, uh,
16 police authorities?

17 A No.

18 Q Uh, toward the legal system, itself?

19 A No.

20 Q Any other -- any other matters that -- that,
21 uh -- I -- I see on here you say, theft, did not
22 find person?

23 A Oh, yeah. That was in, um, Chicago. Somebody
24 smashed my car window and took some things from me.

25 Q Okay.

1 A Um-hmm.

2 Q Sort of a grab and run?

3 A Yep.

4 Q Other than your former spouse, have any family
5 members, or anyone close to you, ever been a
6 suspect in, or arrested in, or charged with a
7 crime?

8 A No, not besides that one.

9 Q Say it again?

10 A Not -- not besides the one I --

11 Q Okay.

12 A -- just mentioned, yeah.

13 Q All right. Did you believe that the battery that
14 was committed on you by the former spouse was
15 handled appropriately by the police authorities?

16 A Yes.

17 Q If you're selected as a juror in this case, you
18 will be instructed that Brendan Dassey is
19 presumed innocent and that he cannot be found
20 guilty of any offense, unless and until the State
21 has proven each element of each offense beyond a
22 reasonable doubt. Could you follow that
23 instruction?

24 A Yes.

25 Q You would also be instructed that Brendan Dassey

1 has a constitutional right not to testify if he
2 so chooses at a trial, and in the event he elects
3 to not testify, you cannot hold that against him.
4 Instead, you must base your decision solely on
5 the evidence introduced at trial. Could you
6 follow that instruction as well?

7 A Yes.

8 Q Thank you.

9 THE COURT: Uh, Mr. Fallon?

10 ATTORNEY FALLON: Yes. Thank you.

11 VOIR DIRE EXAMINATION

12 BY ATTORNEY FALLON:

13 Q Um, congratulations on your marriage, by the way.

14 A Thank you.

15 Q Um, and I guess that's my -- my one concern. You
16 have, um, quite a few children still at home?

17 A Yes.

18 Q If -- if you're, uh, selected as a juror, and you
19 got to, um, spend couple weeks in Manitowoc away
20 from your family and your kids, is that going to
21 present any type of hardship in terms of caring
22 for your kids and making sure they get off to
23 school and whatever else they have to do?

24 A No. My husband's actually at home with the kids.

25 Q He'll be able to do that?

1 A Yes.

2 Q Is he employed?

3 A No.

4 Q That's all I have.

5 THE COURT: Mr. Fremgen, anything?

6 ATTORNEY FREMGEN: No, Judge. Thank you.

7 THE COURT: Thank you. You may step down.

8 JUROR LOWERY: Okay.

9 (Wherein juror is escorted out.)

10 THE COURT: Any motions?

11 ATTORNEY FALLON: No.

12 ATTORNEY FREMGEN: No, Judge.

13 THE COURT: All right. She will be seated.

14 Uh, next juror.

15 ATTORNEY FALLON: Hold it, Your Honor.

16 Can we go back to that last one a moment? I want

17 to ask her to come back in because it looks like

18 she has had -- You asked her if she ever had any

19 arrests, and unless we have the wrong person, we

20 think she may have had several arrests.

21 THE COURT: All right. Let's, uh --

22 ATTORNEY FALLON: Unless I got the wrong

23 person. Well, we have -- Yeah. We have, uh,

24 several -- three arrests for this -- for the same --

25 woman with the same date of birth, so...

1 THE COURT: All right. Yeah, bring her
2 back in. We'll just follow that up.

3 ATTORNEY FALLON: I think it was the way
4 we asked the question.

5 THE COURT: I -- That may well be.

6 (Juror Lowery is brought back in.)

7 THE COURT: Why don't you be seated again.
8 I -- I -- We want to follow up. Do you want to do
9 it, Mr. Fallon, or do you want me to?

10 ATTORNEY FALLON: Doesn't matter to me.

11 THE COURT: Okay.

12 VOIR DIRE EXAMINATION

13 BY THE COURT:

14 Q Uh, and I may have mis-asked a question of you,
15 but at one point I said, uh, have you, any family
16 members, or anyone close to you, ever been a
17 suspect and arrested for or charged with a
18 criminal offense? I -- I think the -- the
19 information is that you may have been arrested at
20 one time?

21 A Oh, yeah.

22 Q Yeah.

23 A I'm -- I'm sorry, Your Honor. Yeah, that's correct.

24 Q Well, this is not the most happily worded
25 question. Uh, were you -- what were you arrested

1 for?

2 A Um, the same person -- we both got arrested for
3 the -- a disorderly --

4 Q Disorderly conduct?

5 A Some disorderly domestic battery I think it was. It
6 was dismissed, um --

7 Q Was that as a result of the battery that we
8 talked about with your ex-spouse?

9 A Um-hmm. Yes.

10 Q Yes? Were you, to the best of your recollection,
11 arrested any other times?

12 A No. No.

13 THE COURT: Mr. Fallon?

14 ATTORNEY FALLON: Yes.

15 VOIR DIRE EXAMINATION

16 BY ATTORNEY FALLON:

17 Q Was there any, uh -- any other, um, side charges
18 like bail jumping or anything like --

19 A For me?

20 Q Yes.

21 A Yes. But I was only arrested once.

22 Q Oh. But for three offenses?

23 A I was only arrested one time. I went to jail once
24 and that was it.

25 Q Um --

1 A Well, back that up to -- to -- I guess, now as I'm
2 recalling, it was probably like ten years ago. They
3 booked me from -- I -- I came into the courthouse for
4 a hearing, they took my fingerprints and let me go.
5 Q All right.
6 A And they -- after that I was arrested once, and
7 that's where the bail jumping came in. It was the
8 same person that we had the disorderly conduct -- I
9 had a disorderly against.
10 Q But the bail jumping, were you arrested, then,
11 for violating some court order?
12 A Um, from the -- from the time that they took my
13 fingerprints.
14 Q Okay. But -- so what did they say you did wrong
15 that resulted in you being arrested?
16 A We got into another fight.
17 Q And this is with your --
18 A The same per -- yes. Same --
19 Q -- with your ex-husband?
20 A Yes.
21 Q All right.

22 VOIR DIRE EXAMINATION

23 BY THE COURT:

24 Q And there was a no contact order or something
25 in --

1 A Well, we live -- No, it wasn't a no contact. I think
2 it was a -- just not -- like one of those things not
3 to get in trouble again or something like that.

4 Q No assaultive contact?

5 A Or something like that.

6 Q All right.

7 VOIR DIRE EXAMINATION

8 BY ATTORNEY FALLON:

9 Q And this was about eight, nine years ago?

10 A Yes. We both actually got arrested at that time and
11 my charges were dismissed.

12 THE COURT: Anything further?

13 ATTORNEY FALLON: No. That clears that up.
14 Thank you.

15 THE COURT: Okay. Thanks.

16 (Wherein juror is escorted out.)

17 ATTORNEY FALLON: There's no motion from
18 us.

19 ATTORNEY FREMGEN: No.

20 THE COURT: Okay. In the box.

21 ATTORNEY FREMGEN: Judge, can I ask a -- a
22 favor, if after this juror we could take our break
23 early? I just need to --

24 THE COURT: Okay.

25 JUDICIAL ASSISTANT: This is Juror No.

1 140, Peter Nehrbass.

2 THE COURT: Good afternoon.

3 JUROR NEHRBASS: Good afternoon.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q Uh, this is individual voir dire. I talked a
7 little bit about it this morning in the
8 courtroom. I'm going to ask you a few questions.
9 Counsel may or may not have some follow-up
10 questions.

11 Uh, this case, the State vs. Brendan
12 Dassey, has received a lot of publicity. Have
13 you heard anything about it?

14 A Yeah. Heard some stuff.

15 Q From what source did you hear it?

16 A Uh, just like the news and stuff.

17 Q Based on what you've heard, have you formed any
18 opinion relative to Mr. Dassey's guilt or
19 innocence?

20 A Not -- not really. I don't know that much. Just the
21 basic stuff.

22 Q Are you telling me you have a very sketchy amount
23 of information?

24 A I know, like, basic -- I don't know.

25 Q Okay. Well, back -- back to the --

1 ATTORNEY FALLON: I'm sorry, Judge, we
2 couldn't hear that answer.

3 Q (By the Court) Yeah. These chairs don't move.
4 The chairs are fixed. So you have to take that
5 microphone and get as close to it as you can.
6 Uh, based on what you've heard, and I understand
7 it isn't, uh, uh -- or at least you're suggesting
8 that it isn't a substantial amount of
9 information, have you formed an opinion at this
10 time as to the guilt or innocence of Mr. Dassey?

11 A No.

12 Q Have you discussed this case with anyone else?

13 A No. I mean, just watching the news and stuff, like,
14 when I wasn't a -- a juror, I guess, you know, like
15 with my mom and stuff.

16 Q Anyone other than your mom that you can think of?

17 A No.

18 Q And were these discussions just sort of things in
19 passing or were they pretty substantial?

20 A Just like -- No. Not substantial. Just comments.

21 Q All right. Have you had a family member or
22 friend who was killed accidentally or otherwise?

23 A My father died, but it was of a heart attack.

24 Q All right. But there -- there -- the heart
25 attack was not brought on by any trauma such as

1 a --

2 A No. He was playing sports.

3 Q Have you, a family member, or a close friend,
4 ever killed anyone accidentally or otherwise?

5 A No.

6 Q If you were called upon to serve as a juror in
7 this case, can you disregard anything you may
8 have read or heard in the media, or from any
9 source, and decide the case solely on the
10 evidence that is received and produced in court?

11 A Yeah.

12 Q Have you, or any close friend, or rel -- or
13 relative, ever been the victim of or a witness to
14 any kind of crime, whether it was reported to law
15 enforcement authorities or not?

16 A No.

17 Q Uh, have --

18 ATTORNEY FALLON: Your Honor, if he could
19 just answer. I know he's shaking his head but --

20 JUROR NEHRBASS: No. Sorry.

21 THE COURT: No. He -- he's answering,
22 but it's very low.

23 ATTORNEY FALLON: Okay.

24 Q (By the Court) Uh, specifically, have any close
25 friends or relatives of yours been the victim of

1 sexual assaults?

2 A No.

3 Q Okay.

4 A No.

5 Q Do try to talk a little louder. Uh, have you, a
6 close friend, or family member, ever been
7 arrested?

8 A I've had close friends arrested, yeah.

9 Q For what sorts of things?

10 A Uh, drug possession, stuff like that.

11 Q All right. Have you ever been arrested for drug
12 possession?

13 A No.

14 Q The fact that you may have had some close friends
15 arrested for drug possession, does that affect
16 your attitude toward police authorities?

17 A A little bit. I mean, not too much though.

18 Q All right. By "a little bit" are we talking a
19 negative or --

20 A Yeah. I've had some bad experiences.

21 Q Again, can you get -- raise your voice --

22 A Yeah.

23 Q -- please?

24 A Sorry. Yes, sir.

25 Q You said you had -- you've had some bad

1 experiences?

2 A Yeah.

3 Q What -- what -- what sorts of bad experiences?

4 A Uh, just like, I think, being treated unfair and

5 stuff.

6 Q You think you've been treated un --

7 A No, not me, just like the people that were arrested.

8 Q Okay. You're -- you're --

9 ATTORNEY FALLON: You're making us work

10 hard here.

11 Q (By the Court) Yeah. Um, can you take that --

12 does that wand and microphone come down a little

13 farther?

14 A Yeah.

15 ATTORNEY FALLON: The whole -- the whole

16 thing will move, I think.

17 BAILIFF: Just slide it toward you.

18 THE COURT: Oh, yeah.

19 JUROR NEHRBASS: Okay.

20 THE COURT: Oh, eureka.

21 Q (By the Court) Um, so what you're talking about

22 is that you think your -- some of your friends

23 may have been dealt with unfairly by police?

24 A Yes.

25 Q Personally, do you think you have?

1 A No.

2 Q Does the fact that some of your friends may have
3 been dealt unfairly with by police, uh, affect
4 your attitude toward law enforcement?

5 A No. No.

6 Q If you were selected as a juror in this case, you
7 would be instructed that Brendan Dassey is
8 presumed innocent and that he cannot be found
9 guilty of any offense, unless and until the State
10 has proven each element of each offense beyond a
11 reasonable doubt. Could you follow that
12 instruction?

13 A Yes.

14 Q Uh, Mr. Dassey has a constitutional right not to
15 testify if he so chooses. If he elected not to
16 testify, uh, you would be instructed that you
17 could not hold that against him. Rather, you
18 must base your decision solely on the evidence
19 introduced at trial. As a juror, could you
20 follow that instruction?

21 A Yes.

22 THE COURT: Mr. Fallon?

23 ATTORNEY FALLON: Thank you.

24 VOIR DIRE EXAMINATION

25 BY ATTORNEY FALLON:

1 Q Um, Mr. Nehrbass, um, what was it about the
2 experiences that your friends had, um, that may
3 af -- affect your viewpoint or attitude as to how
4 the police do their job? What -- what was it
5 that struck you the wrong way?
6 A Just like unnecessary violence and stuff like that.
7 Q Unnecessary -- Did you witness it?
8 A Yeah.
9 Q You were present upon their arrest?
10 A On one occasion, yeah.
11 Q And what did you see that upset you?
12 A I just didn't think they had to be that physical.
13 Q Okay. How physical were they? Tell me what they
14 did.
15 A I just -- Like threw him to the ground and stuff like
16 that. I mean, I guess I could see like the situation
17 because there's a bunch of us, but, so...
18 Q What -- They threw him to the ground, they rolled
19 him over, and they cuffed him?
20 A Yeah.
21 Q Anything else?
22 A No.
23 Q They didn't punch him?
24 A No.
25 Q They didn't hit them with a stick or anything?

1 A No. No.

2 Q Okay. Now, you said there was one other
3 occasion, um, that you may or may not have been
4 present?

5 A No, it was just one.

6 Q Just one occasion? So there's just one arrest?

7 A Yeah. Which I was present.

8 Q In which you were present? Well, are you aware
9 of other incidents?

10 A Of --

11 Q Okay. I -- I -- Let me start over. You said
12 you've had friends, so I assume that's more than
13 one, arrested for drugs, and some of the
14 experiences left you with a -- a -- a bad
15 attitude or affects your attitude --

16 A Which is -- No. No, just one experience there.

17 Q It's just one --

18 A Yeah.

19 Q -- time --

20 A Yeah.

21 Q -- and involving one friend?

22 A Correct.

23 Q Okay. But there was a bunch of you that were
24 present?

25 A Yes.

1 Q How many of you were there?

2 A Like four or five, I think.

3 Q Okay.

4 A It was a lot of us there.

5 Q Okay. Um, where did it happen?

6 A It was at a friend's house. I'm not sure where.

7 Q At a friend's house? How -- how -- Is there a

8 reason why the police were called?

9 A He was leaving the -- the -- We were inside the house

10 and he was outside, so...

11 Q Okay. But do you have any idea why the police

12 would be standing outside this house when you

13 were --

14 A I'm sure they got called because of the noise and

15 stuff.

16 Q All right. So you don't know -- Would it be fair

17 to say you don't know what happened between your

18 friend and the police before you walked out of

19 the house?

20 A Yeah. Yes.

21 Q Okay. So in terms of having a rough experience,

22 um, is it possible that your friend may have said

23 or done something that caused the police to

24 respond roughly in your way of thinking?

25 A Yes.

1 Q Okay. Now, there will be a fair amount of police
2 testimony in our case coming up as you might
3 imagine, uh, was there -- is there anything about
4 the experiences that you and your friends had
5 with the police that says, you know, that I don't
6 think I can give the cops a fair shake here. I
7 just may not find their testimony believable
8 because of these experiences I've had with my
9 friends?

10 A No.

11 Q You're confident about that?

12 A Yes.

13 Q Okay. That's all I have. Thanks.

14 THE COURT: Mr. Fremgen, anything?

15 ATTORNEY FREMGEN: No.

16 THE COURT: You may step down. Thank you.
17 (Wherein juror is escorted out.)

18 THE COURT: Any motions, gentlemen?

19 ATTORNEY FALLON: None.

20 ATTORNEY FREMGEN: No.

21 THE COURT: Mr. Nehrbass will be seated.
22 We'll wait a moment to bring in the next juror.
23 We'll take -- You wanted a break now?

24 ATTORNEY FREMGEN: If I could, please.

25 THE COURT: All right.

1 ATTORNEY FREMGEN: If that's all right,
2 Judge.
3 THE COURT: We'll do that instead of
4 3:00.
5 ATTORNEY FALLON: Fifteen minutes?
6 THE COURT: Yep.
7 (Recess had at 2:45 p.m.)
8 (Reconvened at 3:05 p.m.)
9 JUDICIAL ASSISTANT: No. 147, Ashley
10 Shippy.
11 THE COURT: Good afternoon, Ms. Shippy.
12 JUROR SHIPPY: Hello.
13 THE COURT: Pull up a chair.
14 VOIR DIRE EXAMINATION
15 BY THE COURT:
16 Q This is individual voir dire. I'm going to ask
17 you some questions, and if counsel have follow-up
18 questions, they will ask follow-up questions.
19 Uh, this case, State vs. Brendan Dassey,
20 has received a lot of publicity. Have you heard
21 anything about it?
22 A Very small.
23 Q Very little?
24 A Very little.
25 Q Anything substantial at all or just sort of the

1 name?

2 A Pretty much the name.

3 Q Based on what you have heard, have you formed any

4 opinions regarding the guilt or innocence of

5 Mr. Dassey?

6 A No.

7 Q Have you talked about this case with anyone?

8 A Um, kind of. Not like -- not with details or

9 anything but, like, that I was going to it.

10 Q Just in passing?

11 A Yeah.

12 Q You -- you didn't -- uh, if I understand you

13 correctly, you didn't discuss any details of the

14 case --

15 A No.

16 Q -- is that right? Yes?

17 A Yes.

18 Q Have you had any family member or friend who was

19 killed accidentally or otherwise?

20 A Um, I'm sorry. What?

21 Q Have you had any family member or a friend who

22 was killed accidentally or otherwise?

23 A So like how close of friend? Any friend?

24 Q Is there someone who was killed that you knew?

25 A Yeah.

1 Q A friend?

2 A Yeah.

3 Q Or at least an acquaintance?

4 A Um-hmm.

5 Q Yes?

6 A Yes.

7 Q We have to say -- we have to answer yes or no.

8 Shaking heads or nodding --

9 A Yes, sorry.

10 Q Um, how did -- how did it occur?

11 A Um, I don't know. Like, murder, I guess.

12 Q So --

13 A I just don't know if the -- the trial's done with.

14 You know what I mean?

15 Q So you had a friend that was murdered?

16 A Right.

17 Q How long ago?

18 A Um, July of last year.

19 Q July of 2006?

20 A Yeah.

21 Q Was someone charged with the murder?

22 A Um-hmm.

23 Q Yes?

24 A Yes. Sorry.

25 Q Has -- has that person been tried yet?

1 A I don't know, like, too much about it. I just know
2 that there's a guy -- a suspect, you know.

3 Q Does the fact that you had a friend that was
4 murdered and someone's charged with it affect
5 your attitude toward law enforcement at all?

6 A Not sure I understand the question.

7 Q All right. You -- you've told us that you've had
8 a friend that was, uh -- was murdered and someone
9 was charged with it; is that correct?

10 A Yes.

11 Q Uh, are you satisfied with the way that the
12 police have handled this so far?

13 A No.

14 Q Why not?

15 A Uh, there hasn't been a conclusion yet. I'd want,
16 like, justice.

17 Q You think it should have gone faster?

18 A Yeah. I didn't -- I don't know what -- exactly,
19 like, where the process is in the trial. Like, you
20 know what I mean? Like, I don't know. He has hasn't
21 been convicted yet, but there's a guy in jail waiting
22 to be convicted. I don't really know.

23 Q Well, let me ask you this: The -- the fact that
24 you had a friend murdered and, uh, that there's
25 someone awaiting to be tried on that case, does

1 that, in any way, affect the way you look at this
2 case?

3 A No.

4 Q Uh, you could separate your friend's case from
5 this?

6 A Yes. Yes.

7 Q Have you, a family member, or close friend, ever
8 killed anyone accidentally or otherwise?

9 A No.

10 Q If you were called to serve as a juror in this
11 case, could you disregard anything you may have
12 heard or read in the media, or from any other
13 source, and decide this case based only on the
14 evidence produced in court?

15 A Um, I think so. I'm not too positive.

16 Q Well, you told me before that you had formed no
17 opinions with respect to the guilt or
18 innocence --

19 A Right.

20 Q -- is that correct?

21 A Right. I -- I -- to be honest I don't -- I don't
22 know. I'm not sure I can, like -- I don't feel
23 comfortable, like, handling a bigger decision like
24 this. You know what I mean?

25 Q All right. We'll get to that in -- in --

1 A Sure.

2 Q -- in just a minute --

3 A Sure.

4 Q -- but what I'm asking you here is can you set
5 aside anything that you may have heard about this
6 in the media, and -- and, if you're a juror,
7 concentrate only on what comes in front of the
8 Court?

9 A Yes.

10 Q Uh, have you, or any close friend, or relative,
11 ever been the victim of or a witness to any kind
12 of crime, whether it was reported to law
13 enforcement authorities or not?

14 A No.

15 Q Uh, specifically, have you, or any close friend,
16 or relatives, been the victims of sexual assault?

17 A No.

18 Q Have you, a close friend, or a family member,
19 ever been arrested?

20 A Ugh-ugh.

21 Q No?

22 A No.

23 Q If you're selected as a juror in this case, you
24 will be instructed that Mr. Dassey is presumed
25 innocent and that he cannot be found guilty of

1 any offense, unless and until the State has
2 proven each element of each offense beyond a
3 reasonable doubt. If you were selected as a
4 juror in this case, would you be able to follow
5 that instruction?

6 A Yes.

7 Q Uh, likewise, uh, if you were selected as a
8 juror, you would be instructed that Mr. Dassey
9 has a constitutional right not to testify, and
10 that if he decides not to testify, you cannot
11 hold that against him. You must base your
12 decision solely on the evidence introduced at the
13 trial. Could you follow that --

14 A Yes.

15 Q -- instruction? All right.

16 THE COURT: Mr. Fallon?

17 ATTORNEY FALLON: No questions.

18 THE COURT: Mr. Fremgen?

19 VOIR DIRE EXAMINATION

20 BY ATTORNEY FREMGEN:

21 Q I just want to follow up on a couple of, uh,
22 answers, if I could, Ms. -- Ms. Shippy. You
23 indicated that this friend of yours isn't a very
24 close friend that was murdered?

25 A Um, he was at one point, but then it kind of was,

1 like, we lost touch. You know what I mean? He was,
2 like, in my life, but then he kind of wasn't for
3 awhile. You know?

4 Q So at the time when he was murdered, it -- he was
5 kind of out of your life at that point?

6 A Kind of. Yeah.

7 Q You're aware someone's in jail, you said --

8 A Yes.

9 Q -- awaiting a trial?

10 A Yeah. I'm -- I'm guessing. I don't -- I honestly
11 don't know. It was in my home town, so I don't know.

12 Q Okay. But that's not local? Not here?

13 A No.

14 Q Um, let me ask you about that. If this person is
15 in -- in jail awaiting trial, is that person --
16 do you believe he's guilty of what happened?

17 A Yes.

18 Q Because it's a friend of yours?

19 A Yes.

20 Q Now, you don't know Mr. Dassey; correct?

21 A No, I don't.

22 Q And he's facing the same type of charge, a --

23 A Um-hmm.

24 Q -- murder charge --

25 A Right.

1 Q -- essentially, and the law requires everyone,
2 including your friend's --
3 A Yes.
4 Q -- the person who killed your friend, the
5 presumption of innocence. Are you able to -- I
6 guess -- I -- I guess ignore your experience
7 with --
8 A Yeah.
9 Q -- the friend who's been murdered --
10 A Um-hmm.
11 Q -- and you can presume --
12 A Yes.
13 Q -- Mr. Dassey's --
14 THE COURT: You're going to have to wait
15 until he finishes the question.
16 JUROR SHIPPY. Sorry.
17 Q (By Attorney Fremgen) You mentioned that you're
18 not sure if you could decide -- that means, I
19 guess, I'm assume to be -- you're not sure you
20 could make a decision of guilt or innocence in a
21 case like this, and I think you mentioned because
22 it's a big decision? Okay.
23 A Yes.
24 Q Can you explain what you mean by that?
25 A Um, I guess, like, because I wasn't there, I don't

1 want to -- like -- like deciding someone's future,
2 kind of. Like, I don't know the -- like, I don't
3 know the truth, like -- You know what I mean?
4 Q Are you afraid of being wrong?
5 A Um, yes.
6 Q Would it be different if it were just, let's say,
7 a simple theft case? Or is it the type of case,
8 too, that --
9 A It's the --
10 Q -- concerns you?
11 A -- type of case, yes.
12 Q If the Judge -- And I -- and I -- I'm not saying
13 that because of this that you certainly can't be
14 a juror, but if the Judge were to instruct you
15 that if chosen as a juror, you should do your
16 best to -- to be fair and impartial, and give
17 each side equal opportunity to present their
18 case, you'd be able to do that?
19 A Yes.
20 Q Despite it being a very significant case?
21 A Yeah.
22 Q Okay. I have nothing else.
23 THE COURT: Mr. Fallon?
24 ATTORNEY FALLON: Uh, if I might follow
25 up.

VOIR DIRE EXAMINATION

BY ATTORNEY FALLON:

Q Um, I want to talk about your fear of decision --

A Yeah.

Q -- so to speak. Um, would it matter to you, and make you more comfortable, knowing that if you're one of the 12 people making the decision, you will have all of the information that is brought to the jurors in the courtroom. In other words, if there's a decision to be made, and the jurors are making it, you'll be one of the people who has all of the information, not -- not just what you see or don't see on television, or read in the newspapers, you'll actually see the evidence, hear the testimony firsthand?

A Would I feel better?

Q Yes.

A Yes.

Q Okay. And so that it's not the same as trying to determine guilt or innocence from what you read in the newspaper, or hear on television, or anything else. Do you understand the difference?

A Yes.

Q Okay. And so do you think you would be able to do the job if you're one of the jurors and you

1 have all of the evidence presented to you in the
2 courtroom?

3 A Yes.

4 Q Okay.

5 THE COURT: All right. Uh, thank you. You
6 may step down.

7 (Wherein juror is escorted out.)

8 THE COURT: Any motions?

9 ATTORNEY FALLON: None.

10 ATTORNEY FREMGEN: No.

11 THE COURT: Um, you want to do the next
12 juror now or would you like to have, uh -- You're
13 suggesting Mr. Covington should come back here and,
14 in effect, uh, explain --

15 ATTORNEY FALLON: Well, I mean, I'll tell
16 you the reason for my concern is that I had a CCAP
17 record run. It shows that he was convicted of an
18 OWI second offense and says eight days local jail,
19 and he -- specifically, he was asked did -- did you
20 serve time? Did you go to jail for that? And he
21 said, no. So...

22 THE COURT: Mr. Fremgen, anything?

23 ATTORNEY FALLON: I think he should be
24 struck for cause.

25 ATTORNEY FREMGEN: Judge, I'd like to hear

1 his explanation. He -- you know, you -- you said
2 that he heard the -- the question and he -- how he
3 answered it. Uh, it's -- I -- I don't want to put
4 words in Mr. Covington's mouth either. Maybe he
5 didn't hear the question accurately. Maybe he
6 misinterpreted the question. I suppose that he
7 needs to -- there should be at least some followup
8 and maybe re -- rehabilitative --

9 THE COURT: Well, let's -- let's get him
10 back in here for -- for -- for that. Uh,
11 Mr. Fallon, you may ask him that question.

12 ATTORNEY FALLON: Sure. I hate to say
13 this, but I -- normally, I wouldn't shy away from
14 this, but I'd almost prefer you ask it, because if
15 it turns out there is an explanation --

16 THE COURT: All right. I'll ask it.

17 ATTORNEY FALLON: -- then I'm on the
18 unenviable task.

19 (Wherein Juror Covington is brought in.)

20 THE COURT: Mr. Covington, you're back
21 again.

22 JUROR COVINGTON: Yes.

23 VOIR DIRE EXAMINATION

24 BY THE COURT:

25 Q Perhaps you can clarify something for us.

1 A Uh-huh.
2 Q When we last talked with you, I believe you were
3 asked whether or not you had served any jail
4 time; is that correct?
5 A Yes.
6 Q And you said you had not?
7 A Oh, I -- I misunderstood the question.
8 Q Okay.
9 A Yes -- we did -- I had to do, uh, five days in jail.
10 Q As a result of the second OWI?
11 A Yes.
12 Q Uh, the -- the sheet that I have in front of me
13 says eight days in jail? Might it have been
14 eight rather than five?
15 A Uh, they said eight, but you do five.
16 Q Oh. Okay. Okay. So you misunderstood the
17 question the first time?
18 A Yes.

19 THE COURT: Any followup?

20 ATTORNEY FALLON: No.

21 THE COURT: You're off again.

22 JUROR COVINGTON: All right.

23 THE COURT: Thank you.

24 (Wherein juror is escorted out.)

25 ATTORNEY FALLON: Can we have about 30

1 seconds just to chat amongst us?

2 THE COURT: Go ahead.

3 (Discussion off the record.)

4 THE COURT: On the record. Mr. Fallon,
5 have you had a chance to consult?

6 ATTORNEY FALLON: We -- we talked it over
7 and I -- I -- I'm still renewing my motion to strike
8 for cause.

9 THE COURT: Motion denied. Next juror.

10 JUDICIAL ASSISTANT: Juror 151, Robert
11 Rice.

12 THE COURT: Hi, Mr. Rice. Would you sit
13 down, please? Thank you.

14 **VOIR DIRE EXAMINATION**

15 BY THE COURT:

16 Q This is the individual voir dire of which I spoke
17 about this morning. I'm going to ask you some
18 questions. Counsel may have followup or may not.

19 Uh, this case, uh, State of Wisconsin
20 vs. Brendan Dassey, has received a lot of
21 publicity. Have you heard anything about it?

22 A Just what's been on the news and in the newspapers.

23 Q Would you say that that was a substantial amount
24 or not so?

25 A I would say not. I -- You know, I never went out of

1 my way to check on it or anything like that.

2 Q Based on -- on what you've heard or what you've

3 seen, uh, have you formed any opinion about the

4 guilt or innocence of this defendant?

5 A Um, no, not really.

6 Q Okay: Does "no, not really" mean no?

7 A I mean, no. No, I --

8 Q Okay.

9 A -- have not.

10 Q Have you talked about this case with anyone?

11 A No.

12 Q Have you had a family member or a friend who was

13 killed accidentally or otherwise?

14 A Well, I've had friends that have died since high

15 school, but...

16 Q Well, I'm not talking about died so much as

17 killed?

18 A No.

19 Q Have you, a family member, or a close friend,

20 ever killed anyone accidentally or otherwise?

21 A No.

22 Q Have you, a close friend, or a relative, been the

23 victim of or a witness to any kind of crime,

24 whether it was reported or not to law

25 enforcement?

1 A I had -- had my car broke into.
2 Q Was the person who broke into your car eventually
3 apprehended?
4 A No. It's never been solved as far as I know.
5 Q How long ago did that occur?
6 A Uh, probably about six years ago.
7 Q Um, if you were called to serve as a juror in
8 this case, could you disregard anything you may
9 have heard or read in the media, or from any
10 source, and decide this case based solely on the
11 evidence produced in court?
12 A I think I could. Yes.
13 Q All right. Um, have you ever had a close friend
14 or relative who's been the victim of a sexual
15 assault?
16 A No.
17 Q Have you had a close friend or family member
18 who's been arrested?
19 A No. I've been arrested for, um, OWI.
20 Q For operating while under the influence?
21 A (No verbal response.)
22 Q Yes?
23 A Yes.
24 Q Uh, a single time?
25 A Twice.

1 Q Uh, when were those two occasions?

2 A One was like '80 -- '81, I would say, and the other

3 was '86.

4 Q So there's at least 20 years between the last one

5 and now; is that correct?

6 A Um-hmm.

7 Q Yes?

8 A Yes.

9 Q She can't take down the --

10 A Yes.

11 Q We say that. Okay. Uh, the fact that -- that

12 you -- Were you convicted on each occasion?

13 A Yes.

14 Q Does this affect the way you look at law

15 enforcement? The fact that you were arrested and

16 convicted of operating while under the influence?

17 A Well, it kind of makes me think that I have a

18 tendency to have to lean that you have to prove

19 yourself innocent instead of prove yourself --

20 Q Well --

21 A -- guilty.

22 Q -- did you think the police handled your case

23 fairly?

24 A I think it was handled fairly, yes.

25 Q All right. Do you feel that you, as a result of

1 that, developed some sort of prejudice against
2 police authorities?

3 A No.

4 Q Um, if you're selected as a juror in this case,
5 you will be instructed that Mr. Dassey is
6 presumed innocent and that he cannot be found
7 guilty of any offense, unless and until the State
8 has proved each element of each offense beyond a
9 reasonable doubt. Could you follow that
10 instruction as a juror?

11 A I think I could. Yes.

12 Q Likewise, there would be an instruction that
13 would tell you that he has a constitutional right
14 not to testify in the case, and that if he
15 decides not to testify, you could not hold that
16 against him. Instead, you must base your
17 decision solely on the evidence introduced at
18 trial. Could you follow that as well?

19 A Yes.

20 THE COURT: Mr. Fallon?

21 ATTORNEY FALLON: Yes, thank you.

22 VOIR DIRE EXAMINATION

23 BY ATTORNEY FALLON:

24 Q Notwithstanding the, uh, Court's last, uh,
25 couple of questions with you, um, in the

1 questionnaire, Mr. Rice, um, you indicated there
2 may be some effect on your ability, because of
3 the verdicts reached in the case regarding
4 Mr. Avery, the fact that there is a refuted
5 confession, although recanted by this man, are
6 you sure that you'll be able to set those aside?

7 A Well, I'm not sure on that. I -- Like I said, I read
8 what I read in the paper that he confessed, and then
9 it's kind of hard to, like, just block it out of your
10 mind.

11 Q All right. Um, would it -- would it matter to
12 you if the confession and the statements that
13 he's allegedly made are introduced into evidence?
14 Does that change whether or not you'd be able to
15 decide this case solely on the evidence?

16 A You mean, like, they never even got it entered into
17 evidence? Is that what you -- like -- like -- You
18 mean, like, it never even got it ever entered --

19 Q No. Just --

20 A -- into evidence?

21 Q Let's assume for the sake of argument that it was
22 another piece of the evidence that was
23 introduced. Would you be able to decide this
24 case solely on the evidence without consideration
25 of the verdict in the Steven Avery case?

1 A I'm not sure. I -- Yes. I'll say yes.

2 Q Okay. You're -- you're hesitating a little bit,
3 so...

4 A Like I said, it's hard to block it out of your mind,
5 you know.

6 Q Okay. Well, let's articulate that now, and maybe
7 we should separate the two concepts. You said
8 it's hard to block it out of your mind?

9 A Yeah. What -- what I've read about it. Like, it's
10 hard for me to go in and say that I don't know. I've
11 never heard about it.

12 Q Okay. Um, let's identify the "it". Um, is --

13 A The --

14 Q Is it the -- Let me ask the question. Is it the
15 verdict in Mr. Avery's case or is there something
16 that's allegedly relevant to this case that's
17 causing you concern?

18 A No. The verdict in the Avery case doesn't have a --
19 any effect on the opinion on this case.

20 Q It -- it has no effect?

21 A Ugh-ugh.

22 Q Okay. Relative to this case, will you be able to
23 follow Judge Fox's instruction and decide this
24 case based on the evidence which is presented,
25 not what may be floating out in the media reports

1 or accounts of what is supposedly happening or
2 didn't happen?

3 A Yes.

4 Q Okay. Um, with respect to your own experience,
5 um, from 20 years ago, uh, there anything about
6 those encounters with the police that, uh, makes
7 you wonder whether you'll be able to fairly
8 evaluate, um, their testimony in this particular
9 case? We have lots of police testimony coming
10 up. Do you think you'll be able to give them a
11 fair shake like any other witness?

12 A Yes.

13 Q Do you believe that your cases were fairly
14 handled years ago?

15 A Yeah. I believe it is. Yes.

16 Q Okay. Um, and do -- did you deserve the
17 punishment you received?

18 A Um-hmm. Yes.

19 Q Okay. That's all I have.

20 THE COURT: Anything, Mr. Fremgen?

21 VOIR DIRE EXAMINATION

22 BY ATTORNEY FREMGEN:

23 Q Mr. Rice, uh, in your questionnaire you
24 indicated, and actually just said it a few
25 minutes ago, that you feel that there's a need

1 for someone to prove their innocence; is that
2 correct?

3 A I don't think it's -- You know, I think it's like
4 human nature. Once somebody is accused of something
5 that -- like, you have to prove yourself innocent
6 instead of them proving you guilty.

7 Q That -- that's your feeling?

8 A Yes.

9 Q And you understand the law is different than
10 that?

11 A Um-hmm.

12 THE COURT: Is that --

13 JUROR RICE: Yes.

14 THE COURT: -- a yes?

15 Q (By Attorney Fremgen) And he -- and the Judge
16 already went through that with you that you have
17 to presume that Brendan Dassey, right now, as he
18 sits here, is innocent; right?

19 A Yes.

20 Q And you can do that?

21 A Yes.

22 Q But you would still feel that he should have to
23 prove he's innocent at some point?

24 A I think that's just human nature.

25 Q But could you, yourself, feel that that's

1 something that he should have to do?

2 A No. He's supposed -- supposed to prove him guilty.

3 Q Okay. So if we get through the middle of the
4 trial, and you're a juror, you can still sit --
5 sit there and say he's innocent, because we're
6 not done with the trial yet?

7 A Yes.

8 Q Okay. In regards to the, uh -- You indicated you
9 had the conviction for OWI. Did you have a trial
10 or were you actu -- did you plead guilty to the
11 OWI?

12 A Just pled guilty.

13 Q Did you plead guilty because you felt you were
14 guilty or you had no other choice?

15 A Well, I was guilty and I didn't really have much of a
16 choice. I just wanted to be -- get it put behind me.

17 Q Okay. Had you felt you were not guilty, would
18 you have had a trial?

19 A If I felt I was not guilty I would have. Sure.

20 Q Okay. Thank you, very much. Nothing else.

21 THE COURT: Followup?

22 ATTORNEY FALLON: Yes.

23 THE COURT: Briefly.

24 VOIR DIRE EXAMINATION

25 BY ATTORNEY FALLON:

1 Q Just because somebody pleads not guilty, does
2 that mean they are not guilty? Or does that mean
3 they just as -- you -- asserting their
4 constitutional right to have a trial?

5 A I think there's certain constitutional rights to have
6 a trial.

7 Q So you understand that just because you plead not
8 guilty, doesn't necessarily mean you're not
9 guilty?

10 A Um-hmm. Yes.

11 Q Okay. That's fine. Nothing else.

12 THE COURT: Thank you. You may step down.

13 (Wherein juror is escorted out.)

14 THE COURT: Motions, if any?

15 ATTORNEY FALLON: None.

16 ATTORNEY FREMGEN: No.

17 THE COURT: Okay. He's seated. Next
18 juror.

19 JUDICIAL ASSISTANT: This is Juror 154,
20 Diane Austin.

21 THE COURT: Good afternoon, Ms. Austin.

22 JUROR AUSTIN: Good afternoon.

23 **VOIR DIRE EXAMINATION**

24 BY THE COURT:

25 Q Uh, this is individual voir dire. I'm going to

1 ask you a few questions. After I'm done asking
2 questions, counsel may or may not have some
3 questions to supplement those that I had asked.

4 Uh, this case, State vs. Brendan Dassey,
5 has received a significant amount of publicity.
6 Have you heard anything about the case?

7 A I have read about it in the newspapers.

8 Q Is that your major source of information?

9 A Yes.

10 Q Based on what you have heard, or what you've read
11 in this case, have you formed any opinions
12 relative to the guilt or innocence of this
13 defendant?

14 A Uh, I have read an article. I think maybe my opinion
15 is based more on previous, um, incidents that have
16 happened. Um, a ruling that was last week with his
17 uncle. Um, I don't know that I've completely formed
18 an opinion about this person.

19 Q You -- you're referring -- When you say, "his
20 uncle" you're referring to Steven Avery?

21 A Yes.

22 Q You understand this is a separate case?

23 A Yes, I do.

24 Q And I'll -- I'll ask you again, with respect
25 to -- to this case, the case of Brendan Dassey,

1 have you formed an opinion --

2 A I think I have. Yes.

3 Q Uh, you -- you're going to have to --

4 A Sorry.

5 Q -- wait until I finish the question. Have you

6 formed an opinion as to whether he is guilty or

7 innocent?

8 A Yes, I have.

9 Q And that opinion is?

10 A Guilty.

11 Q Um, if you were instructed to set aside any

12 opinions that you had formed and base an opinion

13 solely on the evidence that is presented at a

14 trial, could you do that?

15 A Yes, I could.

16 Q Have you had a family member or a friend who was

17 killed accidentally or otherwise?

18 A No.

19 Q Have you, a family member, or a close friend,

20 killed anyone accidentally or otherwise?

21 A No.

22 Q Have you, or any close friend, or relative, ever

23 been the victim of or witness to any crime -- any

24 kind of crime, whether it was reported or not?

25 A No.

1 Q Uh, specifically, have you, or a close friend, or
2 relative, ever been the victim of a sexual
3 assault?
4 A No.
5 Q Have you, a close friend, or a family member,
6 ever been arrested?
7 A No.
8 Q Charged with any kind of crime?
9 A Any kind of crime?
10 Q Sure.
11 A Uh, DUI. Family member.
12 Q Someone in your family was arrested for operating
13 while under --
14 A Yes.
15 Q -- the influence?
16 A Yes.
17 Q Were they convicted?
18 A Yes.
19 Q How long ago did this occur?
20 A A year-and-a-half ago.
21 Q Has this affected, in any way, the fact that the
22 family member was arrested and convicted, your
23 attitude toward law enforcement?
24 A No.
25 Q If you were selected as a juror, you would be

1 instructed that Mr. Dassey is presumed innocent
2 and that he cannot be found guilty of any
3 offense, unless and until the State has proven
4 each element of that offense beyond a reasonable
5 doubt. Could you follow that instruction?

6 A Yes.

7 Q Likewise, you would be instructed that Mr. Dassey
8 has a constitutional right not to testify in this
9 case, but that if he decides to testify -- if he
10 decides not to testify, you cannot hold that
11 decision against him. Rather, you must base your
12 decision solely on the evidence that appears at
13 the trial. Could you follow that instruction as
14 well?

15 A Yes.

16 THE COURT: Mr. Fallon?

17 ATTORNEY FALLON: Thank you.

18 VOIR DIRE EXAMINATION

19 BY ATTORNEY FALLON:

20 Q Ms. Austin, you indicated you did form an
21 opinion, and that your opinion -- opinion now is
22 that he is guilty?

23 A (No verbal response.)

24 Q That's a yes?

25 A Yes.

1 Q Okay. Um, is that a -- a strong opinion? Or is
2 that a leaning? Or is that just what you think
3 now? Or --

4 A It's an opinion I formed after reading one newspaper
5 article.

6 Q After one newspaper article. All right. Now,
7 um, would it cause you concern if you were the
8 one standing trial and possible jurors had
9 preliminary opinions or had opinions of guilt
10 without hearing any of the evidence?

11 A Yes.

12 Q All right. And so you realize in this particular
13 case that in our country guilt or innocence can
14 only be determined based upon the evidence which
15 is presented at trial?

16 A Right. Yes.

17 Q All right. And as such, would you acknowledge or
18 would it be fair for you to say that -- that your
19 op -- an opinion -- your opinion is an uninformed
20 opinion?

21 A Yes.

22 Q Okay. And, as such, do you think you'll be able
23 to set that aside and decide this case based on
24 what you hear as evidence?

25 A Yes, I would be able to.

1 Q And you realize that what you hear as evidence in
2 a court may be different and may be more complete
3 than what are in news accounts?
4 A Right. Yes.
5 Q All right. And, as such, are you prepared to set
6 aside your -- these -- these preliminary opinions
7 and decide this case strictly on the evidence
8 that is introduced?
9 A Yes, I would.
10 Q Um, the only other question I have is, um, the
11 family member who was arrested, is that a -- a
12 nephew? Son? Husband?
13 A Husband.
14 Q Okay. Um, is that a local, Dane County
15 situation?
16 A Yes.
17 Q Okay. Um, I assume you and your husband talked
18 about that occurrence?
19 A Oh, yes.
20 Q And, uh, as such, um --
21 A Actually, I take it back. It wasn't Dane County, it
22 was Iowa County.
23 Q Iowa. All right. Uh, in any event, um, setting
24 aside the emotional, uh, aspects of it, when the
25 facts were discussed, and the result, um, finding

1 of guilt, do you think that was a just result --
2 A Yes.
3 Q -- based on everything that occurred?
4 A Yes.
5 Q All right. And in terms of you and your
6 husband's experience, do you think, over all, at
7 least from your perspective as the outside
8 looking in somewhat, that he was treated fairly?
9 A Yes.
10 Q Okay.
11 ATTORNEY FALLON: That's all I have,
12 Your Honor.
13 THE COURT: Mr. Fremgen, anything?
14 ATTORNEY FREMGEN: Sure.
15 **VOIR DIRE EXAMINATION**
16 BY ATTORNEY FREMGEN:
17 Q Uh, Mrs. Austin, you, obviously, know yourself
18 better than we do?
19 A Um-hmm.
20 Q You did fill out the questionnaire, and when you
21 first filled out the questionnaire, your answer
22 was, I honestly think he's guilty?
23 A Um-hmm.
24 Q And you used the word, "honestly"; correct?
25 A (No verbal response.)

1 Q Yes?

2 A Yes.

3 Q Okay. Sorry. That's fine. Now, you've heard

4 some other questions, and the Judge has given you

5 some of the instructions. I'm going to ask you,

6 can you -- do you honestly believe you can set

7 aside that opinion at this point?

8 A Yes, I do. Um, just to kind of elaborate a little

9 bit on that, um, filling that form out sitting at

10 home, as I said, having, you know, read a newspaper

11 article, that kind of thing, I think it changes a lot

12 when you come here and then you're really put in a

13 situation of this is how the system works, it really

14 makes you, I guess, in my opinion, realize that

15 probably having answered that question that way was

16 not a fair answer.

17 Q And -- and now that -- that you've been through a

18 trial or watched a trial --

19 A Yes. I was on a jury once before.

20 Q You were. Okay.

21 A Um-hmm.

22 Q Uh, so you understand that the prosecution goes

23 first, and then we have a chance to, if we wish

24 to, put on any part of our case after that?

25 A Actually, it was -- been so long ago I've pretty much

1 forgotten --

2 Q Okay.

3 A -- about --

4 Q That's okay.

5 A -- the whole thing.

6 Q So, now, since you said you can honestly set

7 aside your initial reaction of -- of -- that --

8 that Brendan was guilty, you can now say that you

9 can presume him innocent right now?

10 A Yes, I could.

11 Q And because the prosecution gets to go first, you

12 get to hear all of what they have to present to

13 you, and when they're done, you can't -- Well,

14 strike that. When they're done with their case,

15 would you be able to honestly say, I can still

16 presume Mr. Dassey innocent until it's my time to

17 go in the back room and make a decision?

18 A Yes. Knowing that -- what the next step is, what the

19 next process would be.

20 Q So you can listen to everything --

21 A Everything.

22 Q -- not just what the prosecution puts on first,

23 which may be damaging or damning-type of

24 testimony?

25 A Yes.

1 Q Okay. Uh, Mr. Fallon asked you a question, and I
2 would -- just want to follow up on it.

3 A Uh-hmm.

4 Q I think it was more of a hypothetical if you were
5 on trial and you -- this -- you were the type of
6 juror with the question of -- where -- where the
7 juror said, I think he's guilty, now, based upon
8 everything now that you've heard, do you think --
9 think you would be a fair jury -- uh, juror -- if
10 you were -- the situation were switched?

11 A I do. I think that taking a step back and looking at
12 how I answered it and then how I feel today, I think
13 I would be a fair juror.

14 Q Okay. Thank you. That's it.

15 THE COURT: Any followup?

16 ATTORNEY FALLON: No.

17 THE COURT: Thank you. You may step down.
18 (Wherein juror is escorted out.)

19 THE COURT: Any motions?

20 ATTORNEY FALLON: No.

21 ATTORNEY FREMGEN: No.

22 THE COURT: All right. So that was Juror
23 No. 30. We're going to do four more. Then, uh,
24 we'll do the general voir dire. At that time, I
25 would like to release most of the other --

1 ATTORNEY FALLON: The balance of the panel.
2 THE COURT: Well, the balance of the
3 panel -- panel, maybe save a couple. I'm willing to
4 be convinced if -- if, uh, uh, this has been a
5 pretty thorough betting process, I can't imagine
6 that there are going to be a significant number
7 of -- of excuses for cause, but I -- I -- I'm not a
8 prophet either.
9 ATTORNEY FALLON: I wouldn't think so
10 either, but I -- let me just toss out a number and
11 see if that goes with your -- We'll have four extra
12 that we've been through individual voir dire. Maybe
13 save another five or six?
14 THE COURT: Five would have been my -- my
15 thought. Yeah.
16 ATTORNEY FALLON: And then, um, let the
17 rest of them -- send them home and we'll, you know,
18 have them stand by the phone, and we may -- we may
19 not need them. I -- I -- I hate to just let them go
20 entirely, but I -- I -- I don't foresee having them
21 sit around all day.
22 THE COURT: No. No. No.
23 ATTORNEY FALLON: That's fine.
24 THE COURT: Mr. Fremgen, that sounds okay
25 to you as well?

1 ATTORNEY FREMGEN: That's fine.

2 THE COURT: And I'm hoping we can complete
3 the entire process then, this day.

4 ATTORNEY FALLON: How late do you want to
5 go, Judge?

6 THE COURT: We'll see. Uh, next juror.

7 ATTORNEY FALLON: Should we have the
8 bailiffs clear out one-half the row over there for
9 these remaining four or five, or doesn't it matter?

10 THE COURT: Um -- uh -- Good afternoon.

11 JUROR SCHWIRTZ: Hello.

12 THE COURT: Uh, you're Ms. Schwirtz?

13 JUROR SCHWIRTZ: Yes, sir.

14 JUDICIAL ASSISTANT: Number 156, Lonna
15 Schwirtz.

16 THE COURT: All right.

17 **VOIR DIRE EXAMINATION**

18 BY THE COURT:

19 Q This is -- this is individual voir dire. I'm
20 going to ask you a couple of questions. After
21 that, uh, counsel may follow up with some
22 additional questions.

23 All right. This is, uh -- case, State
24 vs. Brendan Dassey, has received a lot of
25 publicity. Have you heard anything about it?

1 A Um, on the radio. I've seen a little bit on the
2 internet. Um, a little bit in the paper, but not a
3 lot in the paper.

4 Q So you -- you -- you've gotten some information
5 from the radio, from the internet, and from the
6 newspaper?

7 A Um-hmm.

8 Q Yes?

9 A Yes.

10 Q Okay. Is that a significant amount of
11 information or is it just in passing?

12 A Just in passing.

13 Q Based on that information, have you formed any
14 opinions about the guilt or innocence of this
15 defendant?

16 A I don't have enough information. No.

17 Q So --

18 A No.

19 Q No, you haven't?

20 A No.

21 Q Okay. Um, have you had a family member or a
22 friend who was killed accidentally or otherwise?

23 A No.

24 Q Uh, have you, a family member, or a close friend,
25 ever killed anyone accidentally or otherwise?

1 A No.

2 Q If you're called upon to serve as a juror, can
3 you disregard anything that you may have read,
4 have heard, have seen, and base your decision
5 solely on the evidence that comes in at trial?

6 A Yes.

7 Q Have you, or any close friend, or relative, ever
8 been the victim of or a witness to any kind of
9 crime, whether it was reported to law enforcement
10 authorities or not?

11 A Can you repeat the question?

12 Q Sure. Have you, or any close friend, or
13 relative, ever been the victim of a crime,
14 whether or not it was reported to law enforcement
15 authorities? I think in -- in your questionnaire
16 you say theft you resolved in small claims court?

17 A Oh, yes. Yes.

18 Q Anything beyond that?

19 A No.

20 Q The fact that you were a victim of -- of a theft,
21 uh, does that affect, in any way, your attitude
22 toward law enforcement?

23 A No.

24 Q Did you think -- think your case was -- was
25 handled appropriately?

1 A Yes.

2 Q Have you, or a close friend, or relative, been
3 the victim of a sexual assault?

4 A No.

5 Q Have you, a close friend, or family member, ever
6 been arrested?

7 A No.

8 Q Charged with any crime?

9 A No.

10 Q If you were selected as a juror in this case, you
11 would be instructed that Brendan Dassey is
12 presumed innocent and that he cannot be found
13 guilty of any offense, unless and until the State
14 has proven each element of each offense beyond a
15 reasonable doubt. If you were selected as a
16 juror in this case, would you be able to follow
17 that instruction?

18 A Yes.

19 Q Uh, likewise, there would be another instruction
20 that would tell you that Mr. Dassey has a
21 constitutional right not to testify, and that if
22 he decides not to testify, you cannot hold that
23 against him. But, rather, you would have to base
24 your decision on the evidence that was presented
25 in the case. Can you follow that one as well?

1 A Yes.

2 THE COURT: Mr. Fallon?

3 ATTORNEY FALLON: No questions.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: I just have one, and
6 maybe I missed the question.

7 VOIR DIRE EXAMINATION

8 BY ATTORNEY FREMGEN:

9 Q Have you discussed this case with any friends,
10 neighbors, or family?

11 A No. My husband's aware --

12 Q After you got --

13 A -- of the --

14 Q -- the summons?

15 A Yes.

16 Q Nothing else.

17 THE COURT: All right. Thanks. You may
18 step down.

19 (Wherein juror is escorted out.)

20 THE COURT: Oh, uh, any motions on this?

21 ATTORNEY FALLON: No.

22 ATTORNEY FREMGEN: No.

23 THE COURT: Okay. Uh, she's to be seated.

24 JUDICIAL ASSISTANT: Juror No. 161,
25 David Mortimer.

1 THE COURT: Hi, Mr. Mortimer. Take a seat.

2 VOIR DIRE EXAMINATION

3 BY THE COURT:

4 Q Mr. Mortimer, this is individual voir dire. I'm
5 going to ask you some questions. Counsel may
6 have some follow-up questions.

7 This case, State vs. Brendan Dassey, has
8 received a lot of publicity. Have you heard
9 anything about it?

10 A Um, a little bit. Not -- I don't really don't watch
11 the news too much so I've heard a little bit. That's
12 it.

13 Q What is the source of whatever information it is
14 that you have?

15 A I just heard that, uh, he was involved with -- with
16 the murder case, and that was it pretty much.

17 Q Based on what you heard, have you formed any
18 opinion as to his guilt or innocence?

19 A None.

20 Q Have you discussed this case with anyone?

21 A No.

22 Q Have you had any family member or a friend who
23 was killed accidentally or otherwise?

24 A No.

25 Q Have you, a family member, or a close friend,

1 killed anyone accidentally or otherwise?

2 A No.

3 Q Have you, or any close friend, or relative, ever

4 been the victim of or a witness to any kind of

5 crime, whether it was reported to law enforcement

6 or not?

7 A No.

8 Q Uh, if you were called to serve in this jury,

9 could you disregard anything that you had -- had

10 read or heard in the media, or from any source,

11 and decide this case based solely on the evidence

12 produced through court?

13 A Yes.

14 Q Uh, have -- have, uh -- have you had any close

15 friend or relative who's been the victim of a

16 sexual assault?

17 A No.

18 Q Have you, a close friend, or a family member,

19 ever been arrested?

20 A My son was.

21 Q And he was arrested for what?

22 A Theft.

23 Q Was he charged with theft?

24 A Yes.

25 Q Was he convicted?

1 A Um, probation. That's it. And some fines.

2 Q How long ago did this occur?

3 A Um, this was when he was like 17 -- 16 or 17. Right

4 around that age.

5 Q And he's how old now?

6 A Nineteen.

7 Q So this -- this happened a couple of years ago?

8 A Yeah.

9 Q Was he charged as -- as a juvenile or was he

10 charged in adult court?

11 A Juvenile.

12 Q So this is a juvenile delinquency?

13 A Yes.

14 Q Did you believe that his case was fairly handled

15 by the law enforcement authorities?

16 A Yes.

17 Q That the -- the resolution of it was appropriate?

18 A Yes.

19 Q If you were selected as a juror in this case, you

20 would be instructed that Brendan Dassey is

21 presumed innocent and that he cannot be found

22 guilty of any offense, unless and until the State

23 has proven each element of each offense beyond a

24 reasonable doubt. Could you follow that

25 instruction as a juror?

1 A Yes.

2 Q Uh, if you were selected as a juror, you would
3 also be instructed that Mr. Dassey has a
4 constitutional right not to testify in the case.
5 If he chose to exercise that right, you could not
6 hold that against him. Rather, you would have to
7 base your decision solely on the evidence that
8 came in to the case itself. Could you follow
9 that instruction?

10 A Yes.

11 THE COURT: Mr. Fallon?

12 ATTORNEY FALLON: Yes.

13 VOIR DIRE EXAMINATION

14 BY ATTORNEY FALLON:

15 Q Um, just so I'm clear, and I may have not heard
16 the answer, but, um, other than your son, no one
17 else was arrested for any type of an offense?

18 A No.

19 Q Um, what's your date of birth, sir?

20 A 3/12/66.

21 Q Thank you. Anyone in your family ever been
22 arrested for issuing a worthless check?

23 A Um, my wife was.

24 Q Okay. And how -- how was that resolved?

25 A Uh, she spent -- she spent, like, 12 days in jail and

1 had to pay a fine of \$2,800.

2 Q Okay. So, um -- so there were other -- other
3 than your son, there were other family or other
4 friends who were arrested and convicted of an
5 offense?

6 A Yeah.

7 Q Okay. Um, any other, um, arrests or anything
8 like that you can think of?

9 A No, not right offhand. No.

10 Q Uh, anyone suspected of any type of, um, uh,
11 serious offenses?

12 A No.

13 Q Okay. Um, that's all I have. Thanks.

14 THE COURT: Mr. Fremgen?

15 ATTORNEY FREMGEN: I have nothing.

16 THE COURT: Thank you. You may step down.

17 (Wherein juror is escorted out.)

18 THE COURT: Motions, if any? Understanding
19 this is one of the -- the extras.

20 ATTORNEY FALLON: Right. There seems to be
21 a fair amount of forgetfulness. Um, it -- it's the
22 same concern I have with respect to Mr. Covington.
23 I mean, they say, no, in their questionnaires, with
24 the exception of the one identified. They say, no,
25 to the Court, and then when confronted with, um,

1 information that other family members, or they,
2 themselves, have been arrested, it's, like, oh,
3 well, yeah. Um, so, I mean, to be fair and
4 consistent I'm going to move to strike for cause.

5 I think there's reason to doubt some of
6 the answers based on -- I don't see how you
7 forget that stuff. It's just -- I -- I don't see
8 how Mr. Covington can forget doing five days in
9 jail, and I don't see how this gentleman can
10 forget his wife was arrested, had to pay twelve
11 hundred bucks. Which, from based on what this
12 guy does for a living, that's -- that's a -- a
13 tidy bit of coin. So I think it's a question
14 for -- strike for cause.

15 THE COURT: He said twenty-eight hundred
16 dollars.

17 ATTORNEY FALLON: Twenty-eight hundred.

18 THE COURT: Mr. Fremgen?

19 ATTORNEY FREMGEN: Well, I mean, if that's
20 the whole issue, that he forget about the wife he's
21 separated from, I -- and, again, I don't know --

22 ATTORNEY FALLON: It -- it --

23 ATTORNEY FREMGEN: -- Jurors --

24 ATTORNEY FALLON: I'm sorry. I cut you
25 off.

1 ATTORNEY FREMGEN: That's okay. But --

2 THE COURT: Yeah. Uh, in Mr. Covington's
3 case, I -- I found the -- the explanation somewhat
4 more plausible. In this particular instance, I -- I
5 find it hard to believe that, uh, he could -- this
6 gentleman, and maybe I'm underestimating him, but
7 that he could forget that someone who had been
8 convicted, served some jail time, and paid a fairly
9 significant fine.

10 Uh, I -- I'm going to grant the motion
11 on this one for cause. Next person.

12 JUDICIAL ASSISTANT: This is Juror 174,
13 Diane Blythe.

14 THE COURT: Good afternoon, Ms. Blythe.

15 JUROR BLYTHE: Hi.

16 THE COURT: You can toss that down on
17 that other table if you wish.

18 **VOIR DIRE EXAMINATION**

19 BY THE COURT:

20 Q This is the individual voir dire of which I
21 talked about earlier today. I'm going to ask you
22 a few questions. Counsel may or may not have
23 follow-up questions of you.

24 Uh, this case, the State vs. Brendan
25 Dassey, has received a lot of publicity. Have

1 you heard anything about the case?

2 A Yes.

3 Q From what source did you get that information?

4 A Um, newspapers, and the radio, and TV.

5 Q Based on the information, have you formed any

6 opinions about the guilt or innocence of

7 Mr. Dassey?

8 A Um, well, not really. No.

9 Q The answer is no?

10 A No.

11 Q Okay. Have you discussed the case with others?

12 A Yes.

13 Q Uh, substantial discussions or simply in passing?

14 A Just in passing.

15 Q Based on any of the discussions that you may have

16 had, did that give rise to any opinions as to

17 this defendant's guilt or innocence?

18 A No.

19 Q You had a family member or a friend who was

20 killed accidentally or otherwise?

21 A No.

22 Q Uh, have you, a family member, or a close friend,

23 ever killed anyone accidentally or otherwise?

24 A No.

25 Q If you were called to serve as a juror in this

1 case, could you disregard anything that you had
2 read or heard in the media, or any other source,
3 and base your decision solely on the evidence
4 that comes before the Court?

5 A Yes.

6 Q Have you, or any close friend, or relative, ever
7 been the victim of or a witness to any kind of
8 crime, whether it was reported to law enforcement
9 or not?

10 A No.

11 Q Ever have a -- a friend or anyone in your family
12 that, uh, was the victim of a -- a sexual
13 assault?

14 A No.

15 Q Uh, have you, a close friend, or a family member,
16 ever been arrested?

17 A No.

18 Q Anybody charged with a crime?

19 A No.

20 Q I see in your questionnaire that your husband is
21 employed at the Department of Justice; is that
22 correct?

23 A Yes.

24 Q Uh, would that -- would the fact that he was
25 employed at the Department of Justice move you in

1 one way or another in considering this case?

2 A No.

3 Q Uh, Mr. Fallon, who's seated at counsel table

4 over there, is also employed at the counsel --

5 uh, or is also employed by the Department of

6 Justice. You understand that?

7 A Yes.

8 Q Do you know him?

9 A No.

10 Q Have you ever heard your husband talk about him?

11 A No.

12 Q The fact that both your husband and Mr. Fallon

13 are employed -- I think your husband's a lawyer

14 as well?

15 A Correct.

16 Q As attorneys at the Department of Justice, uh,

17 does that give you any feeling that you might

18 favor the side that the DOJ person is on?

19 A No.

20 Q If you were selected as a juror, you will be

21 instructed that Brendan Dassey is presumed

22 innocent and that he cannot be found guilty of

23 any offense, unless and until the State has

24 proven each element of each offense beyond a

25 reasonable doubt. Could you follow that

1 instruction?

2 A Yes.

3 Q If you were selected as a juror in this case, you
4 would also be instructed that Mr. Dassey has a
5 constitutional right not to testify, and that if
6 he decides to testify, uh, that cannot be held
7 against him. Rather, the decision that you make
8 would have to be based solely on the evidence
9 introduced at trial. Could you follow that
10 instruction?

11 A Yes.

12 Q You noted, I think, also, in your questionnaire
13 that the -- at least as you understood it, the
14 events of -- of the allegations in here may be
15 difficult for you to either contemplate or view;
16 is that correct?

17 A Yes.

18 Q Do you think as -- as part of the jury, you could
19 get through that?

20 A Yes.

21 Q All right.

22 THE COURT: Mr. Fallon?

23 ATTORNEY FALLON: Yes.

24 VOIR DIRE EXAMINATION

25 BY ATTORNEY FALLON:

1 Q Just so that we're clear, um, Ms. Blythe, your
2 husband works in what particular unit for the
3 Department of Justice?

4 A Um, I think he works in the SPAR Unit.

5 Q All right. State Programs -- And that's an
6 acronym for, uh, State Programs, Agencies and
7 Revenue; correct?

8 A Um, I don't know.

9 Q Okay. Fair enough. Um, he does not practice any
10 criminal law; correct?

11 A Correct.

12 Q That's all I have.

13 THE COURT: Mr. Fremgen, anything?

14 **VOIR DIRE EXAMINATION**

15 BY ATTORNEY FREMGEN:

16 Q Uh, how long has your husband been at the
17 Department of Justice?

18 A You know, I thought you were going to ask me that
19 question. I think about two years.

20 Q Okay. Have you ever discussed with your husband
21 this case at all?

22 A Well, yes.

23 Q Okay. Since your summons, you discussed it,
24 obviously --

25 A No.

1 Q Oh.

2 A No. Um, um -- Well, I knew that I -- I mean, I got a
3 summons to appear. Then I read in the newspaper that
4 realized at that point that I would -- could be a
5 potential juror for this case, and so I just said at
6 that point the -- the case that I could be on would
7 be the -- this case. That's all.

8 Q Okay. In -- in the past when you've discussed --
9 or did you -- well --

10 A But once I got the questionnaire, then I did
11 not --

12 Q Okay.

13 A -- discuss it.

14 Q But prior to that?

15 A Right. Just when I knew -- realized from the
16 newspaper, when they reported that this was going to
17 be -- the jurors were going to be picked on April 12,
18 then I realized that was when I was coming in.

19 Q Uh, prior to today, prior to the Judge asking
20 questions, did you know that, uh, another
21 attorney from the same Department was involved in
22 the prosecution of this case?

23 A Well -- Yes, I did.

24 Q From talking to your husband?

25 A Yes. Because he said -- he said the likelihood of

1 you being picked is not very high because I work for
2 the Department of Justice.

3 Q The Judge had asked you if you felt because of
4 that, uh, employment and the relationship, I
5 suppose, that you would feel more inclined to
6 side with the State. Let me ask it this way:
7 Would you feel -- If you were not to find
8 Mr. Dassey guilty, would you find it to be
9 awkward to talk to your husband about it?

10 A No.

11 Q Do you think there would be any awkward feelings
12 at all?

13 A No.

14 Q I have nothing else.

15 ATTORNEY FALLON: One -- one followup, I'm
16 afraid.

17 VOIR DIRE EXAMINATION

18 BY ATTORNEY FALLON:

19 Q What -- what type of law did your husband
20 practice before he came to the Department of
21 Justice?

22 A Um, well, he was in private practice at Lawton and
23 Cates, and he worked with, um, like Oscar Mayer
24 Union, um, that -- that kind of work.

25 Q Business, corporate, labor?

1 A Labor. Yes.

2 Q That's all I have.

3 THE COURT: Thank you. You may step down.

4 (Wherein juror is escorted out.)

5 THE COURT: Any motions?

6 ATTORNEY FREMGEN: No.

7 ATTORNEY FALLON: No.

8 THE COURT: All right. Next juror.

9 JUDICIAL ASSISTANT: Juror 187, Kathleen
10 Pieroni.

11 THE COURT: Good afternoon, Ms. Pieroni.

12 JUROR PIERONI: Good afternoon.

13 **VOIR DIRE EXAMINATION**

14 BY THE COURT:

15 Q This is individual voir dire. I'm going to be
16 asking you a few questions. Counsel may have
17 some follow-up questions.

18 A Okay.

19 Q Uh, this case, State vs. Brendan Dassey, has
20 received a lot of publicity. Have you heard
21 anything about this case?

22 A No, I haven't.

23 Q So this -- your involvement in this process is
24 the first time that you've heard anything --

25 A Right.

1 Q -- about it?

2 A Right.

3 Q Have you formed any opinions relating to the --

4 the guilt or innocence of Mr. Dassey?

5 A No, I have not.

6 Q Have you had family members or -- or -- or a

7 friend who was killed accidentally or otherwise?

8 A No.

9 Q Uh, have you, a family member, or a close friend,

10 ever killed anyone accidentally or otherwise?

11 A No.

12 Q Have you, or has any close friend, or relative,

13 ever been the victim of or witness to any kind of

14 crime, whether it was reported to law enforcement

15 or not?

16 A No.

17 Q Uh, have you, or a close friend, or relative,

18 been the victim of a sexual assault?

19 A No.

20 Q Have you, a close friend, or family member, ever

21 been arrested?

22 A No.

23 Q Anybody charged with a crime?

24 A No.

25 Q If selected as a juror in this case, you will be

1 instructed that Mr. Dassey is presumed innocent
2 and that he cannot be found guilty of any
3 offense, unless and until the State has proven
4 each element of each offense beyond a reasonable
5 doubt. Could you follow that instruction?

6 A Yes, I could.

7 Q Likewise, there will be an instruction that will
8 tell you that Mr. Dassey has a constitutional
9 right not to testify in this case, and that if he
10 decides not to testify, you cannot hold that
11 against him. Instead, you must base your
12 decision solely on the evidence introduced at
13 trial. Can you follow that instruction?

14 A Yes, I can.

15 THE COURT: Mr. Fallon, any questions?

16 ATTORNEY FALLON: Um, just one.

17 VOIR DIRE EXAMINATION

18 BY ATTORNEY FALLON:

19 Q I see from the questionnaire your, uh, son-in-law
20 is a public defender in Brainerd, Minnesota?

21 A Yes, he is.

22 Q All right. Do you talk shop with him at all?

23 A No, I don't.

24 Q All right. Um, ever kick around any cases that
25 he may work on?

1 A No, not really. Um, I usually go up there just for
2 the grandkids. I don't care what he's doing.

3 Q God bless you. That sounds very familiar to
4 somebody I know. That's all I have. Thank you.

5 A Okay.

6 THE COURT: Mr. Fremgen, anything?

7 ATTORNEY FREMGEN: No, Judge.

8 THE COURT: Thanks.

9 JUROR PIERONI: Okay.

10 THE COURT: You may step down.

11 (Wherein juror is escorted out.)

12 THE COURT: Any motions?

13 ATTORNEY FALLON: No.

14 ATTORNEY FREMGEN: No.

15 THE COURT: All right. We'll do the next
16 one.

17 JUDICIAL ASSISTANT: Juror 200, Paul
18 Steichen.

19 THE COURT: Hi, Mr. Steichen. You can put
20 your jacket down on the -- the desk or any place
21 you -- you please.

22 JUROR STEICHEN: Thanks.

23 **VOIR DIRE EXAMINATION**

24 BY THE COURT:

25 Q This is the individual voir dire of which I spoke

1 earlier today. I'm going to ask you a few
2 questions. Counsel may have some follow-up
3 questions for you.

4 Uh, the first of those questions is
5 this: This is -- this case, the State vs.
6 Brendan Dassey, has received a substantial amount
7 of publicity. Uh, have you heard anything about
8 this case?

9 A Just -- Nothing recently. I haven't followed it or
10 anything, specifically.

11 Q Could I ask you to -- to take that mike and push
12 it just a little closer --

13 A Oh.

14 Q -- closer to you? Um, it sounds as though at one
15 point or another you did hear something about it?

16 A Right. Yes.

17 Q What was the source of what you heard?
18 Newspaper? TV?

19 A Uh, newspaper. Or, I mean, TV and a little bit of
20 newspaper.

21 Q Based on what you heard, have you formed any
22 opinions about the guilt or innocence of
23 Mr. Dassey?

24 A No.

25 Q Have you discussed this case with other people?

1 A No.

2 Q Have you had family -- a family member or a
3 friend who was killed accidentally or otherwise?

4 A No.

5 Q Uh, have you, a family member, or close friend,
6 ever killed anyone accidentally or otherwise?

7 A No.

8 Q If you were called upon to serve as a juror in
9 this case, could you disregard anything you may
10 have read or heard in the media, or from any
11 source, and decide this case based solely on the
12 evidence produced in court?

13 A I could.

14 Q Have you, or any close friend, or relative, ever
15 been the victim of or witness to any kind of
16 crime, whether it was reported to law enforcement
17 authorities or not?

18 A Uh, I've had a friend who's been a victim.

19 Q What sort of crime was he a victim of?

20 A Um, it was assault. A stabbing.

21 Q Uh, according to your questionnaire you don't
22 think anyone was -- was caught or charged; is
23 that correct?

24 A Uh, not that I'm aware of.

25 Q Were you satisfied, uh, in the manner in which

1 the police handled it?

2 A Um, it -- it happened to him in the, uh, Virgin

3 Islands.

4 Q Oh. Okay.

5 A So it wasn't --

6 Q We're not talking about, uh, authorities here in

7 the United --

8 A Oh.

9 Q -- States?

10 A No, not here.

11 Q Okay. Any -- anyone else that you can -- can

12 think of? Friend that's been, um, victimized?

13 A No, not that I can think of.

14 Q Uh, have any close friends or relatives of yours

15 ever been the victims of sexual assaults?

16 A No.

17 Q Have you, a close friend, or family member, ever

18 been arrested?

19 A No.

20 Q If you were selected as a juror in this case, you

21 would be instructed that -- that Brendan Dassey

22 is presumed innocent and that he cannot be found

23 guilty of any offense, unless and until the State

24 has proven each element of each offense beyond a

25 reasonable doubt. Could you follow that

1 instruction?

2 A Yes.

3 Q If you were selected as a juror in this case, you
4 would also be instructed that Mr. Dassey has a
5 constitutional right not to testify, and that if
6 he decides not to testify, you cannot hold that
7 against him. Rather, you must base your decision
8 solely on the evidence introduced at trial. Can
9 you follow that instruction as well?

10 A I could.

11 THE COURT: Mr. Fallon, any questions?

12 ATTORNEY FALLON: No.

13 THE COURT: Mr. Fremgen?

14 ATTORNEY FREMGEN: No, Judge.

15 THE COURT: Thank you. You may step down.

16 JUROR STEICHEN: Thanks.

17 (Wherein juror is escorted out.)

18 THE COURT: That, uh, is the 34th, at least
19 by my count, person to be seated. Um -- I'm sorry.
20 Was there a motion on this one? I'm assuming
21 there -- uh --

22 ATTORNEY FALLON: No.

23 THE COURT: -- we've not heard one --

24 ATTORNEY FREMGEN: No.

25 THE COURT: -- that there's no

1 objection. Um, based on our last discussion, I'm
2 going to excuse all but five of the, uh -- five
3 of the panel members or the pool members. We'll
4 keep five in reserve next to the four. Uh, it's
5 an excessive caution, but given the track record
6 in the last case, uh, I'd rather be excessive on
7 the cautionary side than not. Uh, does anyone
8 object to that procedure?

9 ATTORNEY FALLON: Um, no, Judge.

10 ATTORNEY FREMGEN: No, Judge.

11 THE COURT: We then will take a break
12 and -- uh, okay. We'll take a break. You're going
13 to have to set up in the other -- in the other
14 courtroom. Let's take, uh, about, uh -- Go ahead.

15 BAILIFF: What -- what is the procedure
16 we're going to do? Because I -- he had some
17 questions. I think we have some questions about
18 how we're going to move him with people in the
19 courtroom and stuff like that.

20 THE COURT: Okay. What -- what we're going
21 to do is -- is as follows: We will excuse all
22 juror -- or all pool members who are out there now
23 except five, who are sort of backups to the extra
24 four that we've chosen. We have 34 seated. Okay?

25 ATTORNEY FALLON: The next five we're going

1 to keep and then everyone else can be excused.

2 THE COURT: You understand that; right?

3 BAILIFF: I understand.

4 THE COURT: Okay.

5 BAILIFF: So we'll have nine all

6 together in reserve.

7 JUDICIAL ASSISTANT: Nine extra.

8 THE COURT: Nine extra. Uh, yeah. And,
9 uh, the -- the other folks are excused. They should
10 call in just --

11 JUDICIAL ASSISTANT: We'll give them a
12 sheet.

13 THE COURT: Okay. Okay. Okay.

14 JUDICIAL ASSISTANT: Want me to do that
15 now?

16 THE COURT: Sure. Do it now. Uh, we'll
17 take about, uh, five or ten minutes here so -- one
18 second -- so, um, Jenny can set up in the other
19 courtroom. Question?

20 BAILIFF: So they'll call in tomorrow to
21 make sure that we don't need them? Is that what
22 you're saying?

23 THE COURT: I will -- that's -- that's a
24 good question.

25 BAILIFF: Right.

1 THE COURT: And I think that's fair.

2 BAILIFF: Okay. And then the next
3 question is, the jurors that are up there, and
4 the extra jurors, are we going to kick them all
5 out of the courtroom and then move Mr. Dassey
6 over, or are we going to wait until you all go
7 over together at one time when we're done with
8 the break so --

9 THE COURT: We --

10 BAILIFF: I don't know how you guys
11 are --

12 THE COURT: Yeah.

13 BAILIFF: -- try to run things so -- so
14 things aren't --

15 ATTORNEY FALLON: I -- I -- I would --
16 I -- I would recommend excusing them for ten
17 minutes, tell them to go out and stretch their
18 legs. We may go another two hours. And, um -- I
19 mean, if you want to get done tonight, but -- and
20 do strikes tonight, it's -- its not --

21 THE COURT: All right. That's --
22 that's -- that's a fair suggestion.

23 ATTORNEY FALLON: And then you guys can
24 set up a room --

25 THE COURT: Let's go off the record.

1 (Discussion off the record.)

2 (Recess taken at 4:21 p.m. to move to
3 the other courtroom.)

4 (Reconvened at 4:38 p.m.)

5 THE COURT: Let's go back on the record.

6 Uh, ladies and gentlemen, I told you at the outset
7 of this proceeding that after we completed
8 individual voir dire we would do something called
9 general voir dire.

10 Uh, it has taken a substantial amount of
11 time today to complete the individual voir dire.
12 The general voir dire, which I expect will
13 certainly not last as long, will, however,
14 probably take some time.

15 Accordingly, counsel, uh, have, uh,
16 requested, and I've granted the request, that we
17 adjourn for the day, and that we take this up
18 again tomorrow at 8:30.

19 Um, I'm going to remind you of the
20 admonishment not to speak to anyone about any
21 aspect of this case, not to look at any news
22 report, listen to any news report. Uh, you are,
23 as part of this jury panel, ordered not to do
24 that.

25 Uh, Mr. Kratz, this is the -- anything

1 further to add?

2 ATTORNEY KRATZ: No, Judge. I think

3 that -- that states it correctly.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: No, Judge. Thank

6 you.

7 THE COURT: So tomorrow we will see you

8 here at 8:30, and by "you" I mean the 30 people that

9 are in the box, the additional four people, and we

10 have an additional five beyond that; correct?

11 ATTORNEY KRATZ: Thirty-nine. Yes,

12 Judge.

13 THE COURT: Thirty-nine. All right. We're

14 adjourned.

15 (Court stands adjourned at 4:42 p.m.)

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
21
22
23
24
25

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,
5 PLAINTIFF, JURY TRIAL
6 vs. VOIR DIRE - DAY 2
7 BRENDAN R. DASSEY, Case No. 06 CF 88
8 DEFENDANT.
9

10 **DATE:** APRIL 13, 2007
11
12 **BEFORE:** HON. JEROME L. FOX
13 Circuit Court Judge

13 **APPEARANCES:**
14 KENNETH R. KRATZ
15 Special Prosecutor
16 On behalf of the State of Wisconsin.
17
18 THOMAS FALLON
19 Special Prosecutor
20 On behalf of the State of Wisconsin.
21
22 NORMAN A. GAHN
23 Special Prosecutor
24 On behalf of the State of Wisconsin.
25
26 MARK R. FREMGEN
27 Attorney at Law
28 On behalf of the defendant.
29
30 RAYMOND L. EDELSTEIN
31 Attorney at Law
32 On behalf of the defendant.
33
34 BRENDAN R. DASSEY
35 Defendant
36 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

1 (Reconvened at 8:39 a.m.; Jurors present.)

2 THE COURT: Looks as though everyone's
3 here. I'll call the, uh -- We'll go on the record.
4 This is the matter of the State of Wisconsin vs.
5 Brendan Dassey. It's a Manitowoc County case,
6 06 CF 88. Appearances.

7 ATTORNEY FALLON: Yes. Good morning,
8 Your Honor. The State appears by Assistant
9 Attorney General Tom Fallon, District Attorney
10 Ken Kratz, and Assistant District Attorney Norm
11 Gahn as special prosecutors for Manitowoc County.

12 ATTORNEY FREMGEN: Judge, Attorney Mark
13 Fremgen appears in person with Attorney Ray
14 Edelstein. Brendan Dassey appears, also, in
15 person.

16 THE COURT: Thank you, gentlemen. Uh,
17 members of the jury panel, yesterday I told you at
18 the close of individual voir dire we would do
19 something called, uh, general voir dire. Again, uh,
20 the purpose of general voir dire is not to invade
21 anyone's privacy, but, rather, to get sufficient
22 information to assure everyone involved in this case
23 that the final jury will be fair and impartial.

24 I'm going to ask a number of questions.
25 If your answer to any of these questions is

1 yes -- yes, I ask that you please raise your
2 hand. I ask that those panel members who are not
3 in the jury box listen to -- carefully to all the
4 questions that I'm asking. If one or more of the
5 jurors in the jury box are excused, one of you
6 will be called from the panel to replace them.
7 If that occurs, I will ask a few general
8 questions covering all the previous questions and
9 ask for your response.

10 Once I have completed my general voir
11 dire, each side, beginning with the prosecution,
12 will be permitted to ask questions. After they
13 have completed their questions, each side will be
14 permitted to strike a number of names from the
15 panel until we have a final jury.

16 As I told you yesterday, the final panel
17 will consist of 16 persons. So I'm going to
18 start with the questions.

19 Is there anyone of you that is related
20 by blood, marriage, or adoption, or acquainted
21 with the defendant, Brendan Dassey, who is seated
22 at the defense table?

23 Do any of you know any member of the
24 defendant's family or relations?

25 Do any of you know the defendant's

1 attorneys, Mark Fremgen or Ray Edelstein, both of
2 whom practice in Oshkosh?

3 I'm going to ask one of these
4 attorneys -- We're going to have a number of
5 witnesses during the course of this case. Uh,
6 most of the witnesses have no connection with,
7 uh, the Dane County area, but I'll ask one of the
8 defense attorneys to identify any witness or
9 witnesses that they may have who have connections
10 with the Dane County area.

11 ATTORNEY FREMGEN: There's a -- One
12 witness will be Mike Riddle. Works at the, uh,
13 Crime Lab here in Madison. I imagine also lives
14 in Madison.

15 THE COURT: All right. Is anyone
16 acquainted with Mike Riddle?

17 ATTORNEY FREMGEN: The other is a
18 Dr. Robert Gordon. He's a forensic psychologist
19 from Janesville.

20 THE COURT: Anyone acquainted with
21 Dr. Robert Gordon? All right. Thank you.

22 Are any of you acquainted with the
23 prosecutors; Attorney Ken Kratz, Tom Fallon, or
24 Norm Gahn? Mr. Kratz is the district attorney of
25 Calumet County, Mr. Fallon, to give this a little

1 context, is with the Department of Justice, and
2 Mr. Gahn is an assistant district attorney in
3 Milwaukee County. Anyone acquainted --

4 ATTORNEY KRATZ: Judge --

5 THE COURT: -- with them? There may be
6 a number of witnesses from the Dane County area
7 that testify for the prosecution. I ask one of
8 the prosecutors to identify those witnesses.

9 ATTORNEY FALLON: Thank you, Judge. Uh,
10 morning. The first four names are, um, special
11 agents for the Wisconsin Department of Justice.
12 They're not based in Madison, but they come to
13 Madison frequently. They are Tom Fassbender, Kim
14 Skorlinski, Tom Sturdivant, Ron Pevytoe.

15 Uh, other witnesses with Madison
16 connections and -- are Sherry Culhane from the
17 Wisconsin Crime Lab, a DNA analyst; Uh,
18 Dr. Leslie Eisenberg, a forensic anthropologist,
19 uh, who also works for our State Historical
20 Society; uh, Dr. John Ertl from the Crime Lab;
21 Bill Newhouse from the Crime Lab here; Kenneth
22 Olson from the Crime Lab; Dr. Don Simley, a
23 forensic dentist based here in Madison; Mr. Nick
24 Stahlke, also of the Crime Lab; and I believe
25 Counsel may have already mentioned, uh, Mike

1 Riddle, a fingerprint analyst from the Crime Lab.

2 THE COURT: Thank you. Are any of you
3 acquainted with any of these persons?

4 Have any of you any interest in this
5 case or its outcome?

6 Is there -- Are there any among you who
7 is a member of any police department, sheriff's
8 department, or other law enforcement agency?

9 Is there any member of your immediate
10 family or relation who's employed in a law
11 enforcement-related capacity?

12 All right. I'm going to start over --
13 over here with Ms. Hayman Ware. If I recall
14 correctly, your husband is a police officer?

15 JUROR HAYMAN WARE: Yes.

16 THE COURT: Uh, and I think we touched upon
17 this in individual voir dire yesterday. Does --
18 does that, in your own mind, mean that you would
19 favor the -- the side that, uh, reflected law
20 enforcement values?

21 JUROR HAYMAN WARE: No.

22 THE COURT: That you would be able to --
23 to -- to hear the evidence and decide fairly and
24 impartially based on what you heard in court?

25 JUROR HAYMAN WARE: Yes.

1 THE COURT: There was another hand that
2 went up. Uh, you are Ms. Garske?

3 JUROR GARSKE: Correct.

4 THE COURT: And who is in law enforcement?

5 JUROR GARSKE: My brother.

6 THE COURT: Uh, is he a local law
7 enforcement agent?

8 JUROR GARSKE: No.

9 THE COURT: Where is he located?

10 JUROR GARSKE: Arkansas.

11 THE COURT: Does the fact that you have a
12 family member or a brother involved in law
13 enforcement affect the way you look at this case?

14 JUROR GARSKE: No.

15 THE COURT: Maybe -- You believe that you
16 can decide this case fairly and impartially based on
17 the evidence that is brought to court?

18 JUROR GARSKE: Yes.

19 THE COURT: All right. Was there -- Oop,
20 we have more hands up here. I'll -- I'll go and --
21 Mr. Drewsen?

22 JUROR DREWSSEN: Yeah. I have an uncle
23 who's a, uh, Chief of Police in Woodruff,
24 Wisconsin.

25 THE COURT: Your uncle is the Chief of

1 Police in -- of Woodruff; is that correct?

2 JUROR DREWSEN: Yes.

3 THE COURT: Does that fact affect the
4 way you look at the -- this case?

5 JUROR DREWSEN: No.

6 THE COURT: Uh, can you consider the
7 evidence and decide fairly and impartially based on
8 that evidence?

9 JUROR DREWSEN: Yes.

10 THE COURT: All right. I think there was
11 an additional hand? Uh, Ms. Foss?

12 JUROR FOSS: My cousin is a police
13 officer in Lake City, Minnesota.

14 THE COURT: The fact that you have a -- a
15 family member or relative involved in police work,
16 does that affect the way you look at a case like
17 this?

18 JUROR FOSS: No.

19 THE COURT: Can you consider -- Can you
20 base any decision you make on the evidence and only
21 on the evidence that you see in court?

22 JUROR FOSS: Yes.

23 THE COURT: Anyone else? Ah. Uh, Ms.
24 Blankenship?

25 JUROR BLANKENSHIP: My father was a

1 police officer.

2 THE COURT: And where was he a police
3 officer?

4 JUROR BLANKENSHIP: In Dane County.

5 THE COURT: Does that affect the way you
6 look at this case?

7 JUROR BLANKENSHIP: No.

8 THE COURT: Can you base any decision you
9 make on the evidence that is brought to court?

10 JUROR BLANKENSHIP: Yes.

11 THE COURT: And render a fair and impartial
12 judgment?

13 JUROR BLANKENSHIP: Yes.

14 THE COURT: Anyone else? I'm going to
15 address the court reporter. Are you hearing the
16 answers?

17 COURT REPORTER: Yeah.

18 THE COURT: Okay. There's a mike,
19 apparently, that can be used to be passed --

20 COURT REPORTER: I've been able to so
21 far, so --

22 THE COURT: I'm sorry?

23 COURT REPORTER: I can -- So far I've
24 been able to hear them okay.

25

1 THE COURT: Okay. There's a mike that
2 can be used to be passed around to jury members,
3 and if someone's having difficulty hearing --

4 ATTORNEY FALLON: Right. I was going to
5 suggest maybe that should be made available,
6 because I'm certainly going to invite the jurors
7 to talk during the voir dire, and I'm pretty sure
8 counsel is likewise, so if the jurors want to
9 hear each other's responses, maybe it would be
10 good to --

11 THE COURT: Okay. Who's in charge of that?
12 While we're getting the mike, I'll ask the, uh --
13 I'll ask the next question.

14 Is there any among you who believes that
15 a person is likely to be guilty simply because
16 that person has been charged with a crime?

17 Under our laws, the State has the burden
18 of proving guilt in a criminal proceeding. No
19 defendant is required to prove his or her
20 innocence. A defendant may testify in a criminal
21 trial, but our al -- our laws also provide that a
22 defendant need not testify. Is there anyone
23 among you who cannot or will not accept these
24 requirements of our legal system?

25 Is there anyone among you who would

1 impute guilt to this defendant simply because he
2 did not take the witness stand and testify?

3 Would the types of crimes in these
4 charges prevent any of you from serving on this
5 jury fairly and impartially?

6 Is there any among you who cannot or
7 will not try this case fairly and impartially on
8 the evidence that is given here in court, and
9 under the instructions of the Court, and render a
10 just and true verdict?

11 Is there anyone among you who, for any
12 reason that I have not yet touched on, cannot
13 serve on this jury?

14 All right. Mr. Fallon? Oh, one moment
15 here. Uh, Ms. Shea?

16 JUROR SHEA: Yes. Can I just say for
17 being on the jury, I just want to reiterate that
18 I'm a student, and I'm kind of getting really
19 nervous about having to take, like, five exams
20 when I come back and missing my finals. I know
21 it's not a legal system but it's --

22 THE COURT: You're a full-time student at
23 the University?

24 JUROR SHEA: Yeah. I just feel like
25 maybe my concentration won't be all there because

1 I'll be thinking about everything.

2 THE COURT: I -- Have you made arrangements
3 with your --

4 JUROR SHEA: Yeah --

5 THE COURT: -- teachers?

6 JUROR SHEA: Yeah. I talked to all my
7 professors.

8 THE COURT: Counsel?

9 ATTORNEY FALLON: I -- All I can say is
10 we'll definitely keep that in consideration.

11 THE COURT: All right.

12 JUROR SHEA: Okay. Thank you.

13 ATTORNEY FALLON: On behalf of the
14 prosecution team, welcome. Um, I know that, uh,
15 I'll be asking some general questions here, and
16 my, uh, colleague, um, from Oshkosh, uh,
17 Mr. Fremgen, will also be asking some questions,
18 and we did want to make one point with you as we
19 begin, and that's simply this:

20 There are two points in the trial in
21 which you, as jurors, if you're selected as
22 jurors, have a chance to talk with each other and
23 interface, and, obviously, one is deliberations,
24 but the other one is right now. And the only
25 other time, in fact, the only time, you actually

1 get to engage in a dialogue with the attorneys,
2 is now. And so this is your opportunity, and we
3 invite you to participate in the discussion here
4 to help us in -- in selecting 16 of you, and,
5 ultimately, 12, to be the jurors in this case.
6 So we -- we do appreciate your, uh, willingness
7 to be here and we do appreciate any participation
8 in -- in this regard.

9 Um, in terms of, uh, how we're going to
10 begin, there's about just four or five topic
11 areas that I want to, uh, discuss with you, and,
12 hopefully, elicit some comments from you. Um,
13 there'll be more discussion, I think, as we get
14 into the issues, and I have some preliminary
15 questions that I'm going to begin with, uh, and
16 that's how I'd like to start.

17 Um, so the first kind of general area
18 are some safety issue discussions, and my first
19 question of anyone on the panel:

20 Has anyone ever been in charge of
21 writing any kind of safety guidelines or
22 enforcing any safety standards in any employment
23 situation that you may have or any others?

24 Okay. Great. Um, let's do this: We'll
25 start, and we'll go back. Uh, none in the first

1 row. And in the second row, we'll start with the
2 hands in the second row. Oh, are -- Okay. Um,
3 Ms. Hayman Ware?

4 JUROR HAYMAN WARE: Yes. Um, I work for
5 Child Welfare, so I often have to come up with
6 safety plans for the children I'm working with
7 and put those in place.

8 ATTORNEY FALLON: Okay. And, um, have
9 you been called upon to actually enforce any
10 safety standards in some regards?

11 JUROR HAYMAN WARE: Yes.

12 ATTORNEY FALLON: Uh, tell us about
13 that.

14 JUROR HAYMAN WARE: If the safety plans
15 aren't followed by the family, there are times
16 when I've had to remove children from their
17 parents' homes because, um, a safety plan wasn't
18 being followed or children weren't safe even with
19 the safety plan in place.

20 ATTORNEY FALLON: All right. So, in
21 other words, if the plans aren't followed, then
22 there are consequences for not following those
23 plans?

24 JUROR HAYMAN WARE: Yes.

25 ATTORNEY FALLON: Okay. Um, I think

1 there was -- Right here? That would be, um --

2 JUROR ANDERSON: Anderson, Heidi.

3 ATTORNEY FALLON: -- Ms. Anderson?

4 JUROR ANDERSON: Um, I work for a day
5 care. I watch 12 four- and five-year-olds, and
6 I'm responsible for their safety, and if I feel
7 that the parents or a teacher is negligent, I
8 then have to go through the measures to make sure
9 that the child will stay safe.

10 ATTORNEY FALLON: Okay. And what kind
11 of measures, um --

12 JUROR ANDERSON: Um, a lot of times it's
13 talking with the parents. Sometimes we have to
14 call authorities, you know, whether it's social
15 workers or the police, to make sure that the
16 child's safety is seen to. A lot of times it's
17 smaller things like making sure the child,
18 itself, doesn't hurt themselves.

19 ATTORNEY FALLON: Okay. So in terms of
20 your specific role, do you actually en -- enforce
21 any consequences, or do you call upon others to
22 en -- enforce consequences for not following
23 these safety behaviors?

24 JUROR ANDERSON: Legally, I'm not
25 allowed to enforce. I have to go through either

1 my director or call an outside individual.

2 ATTORNEY FALLON: Okay. Great. Um,
3 anyone else in row two? All right. Let's jump
4 to row three. Um, yes, sir. Mr. Williams?

5 JUROR HEINZEL: Heinzl.

6 ATTORNEY FALLON: Oh, Heinzl. Excuse
7 me.

8 JUROR HEINZEL: Yes. I worked in, uh,
9 plant operations for about 18 years. Not the
10 past two years, but prior to that 18 years in
11 plant operations in a plant. We had to enforce
12 safety, uh, rules for the plant. If an employee
13 violated a lock-out, tag-out, or wasn't following
14 the plant rules, I had to enforce that.

15 ATTORNEY FALLON: Okay. And, uh,
16 occasionally what were some of the consequences?

17 JUROR HEINZEL: Um, we would have a
18 discipline program, and maybe a written writeup,
19 a verbal warning, could lead to suspension, those
20 types of things.

21 ATTORNEY FALLON: Very good. Um, anyone
22 else in row three? All right. How about the
23 back row? Um, on the far end there?
24 Mr. Johnson?

25 JUROR JOHNSON: Yep. Um, the -- the

1 company that I work for, we're in a warehouse
2 setting, and I'm a manager there, and we have a
3 strict set of guidelines as far as our safety
4 policies and procedures, and, uh, if a associate
5 fails to follow those, um, it's gone anywhere
6 from a written warning to termination.

7 ATTORNEY FALLON: All right. And, um,
8 are you one who writes the guidelines, or do you
9 enforce, them or both?

10 JUROR JOHNSON: Enforce them.

11 ATTORNEY FALLON: You do. All right.

12 JUROR JOHNSON: Yeah. We -- we have to
13 do a followup and write kind of new guidelines
14 for our store if an accident does happen.

15 ATTORNEY FALLON: Have you been called
16 upon to enforce those regularly, or is it just
17 something that's an occasional issue?

18 JUROR JOHNSON: Um, it -- it's pretty
19 occasional. I guess I -- I would say we have
20 really good associates.

21 ATTORNEY JOHNSON: Anyone else in the
22 back row? Yes. On the far end? Ms. McDonald?

23 JUROR McDONALD: Um, I run a volunteer
24 bird vending, uh, station up at the University of
25 Wisconsin campus natural areas, and I am required

1 by the animal welfare, uh, folks on campus to
2 abide by the certain safety guideline.

3 ATTORNEY FALLON: All right. And, um,
4 do you write the guideline, or do you enforce, or
5 little of both?

6 JUROR McDONALD: Uh, I am supposed to
7 make sure that the volunteers follow, uh, animal,
8 uh, handling practices, and also safety
9 practices, and we do have certain, uh, rules for
10 health safety reasons.

11 ATTORNEY FALLON: Are there, uh,
12 consequences? Uh, what kind of -- What are the
13 range of consequences if some of the folks don't
14 follow the rules or the guidelines that are set
15 forth?

16 JUROR McDONALD: Uh, they can make me
17 angry. Uh, I can ask them to not volunteer with
18 our projects.

19 ATTORNEY FALLON: That's a polite way of
20 showing them the door?

21 JUROR McDONALD: Yes. Outside, yes.

22 ATTORNEY FALLON: All right. Anyone
23 else in the back row? Uh, yes, sir.

24 JUROR: Um, I'm not sure if this is in
25 the same guideline, but I literally do show --

1 I -- I literally do show people -- I work at a
2 bar, um, as a doorman --
3 ATTORNEY FALLON: All right.
4 JUROR: -- is one of my jobs --
5 ATTORNEY FALLON: Sure.
6 JUROR: -- and so I do -- you know,
7 literally do show people the door occasionally.
8 I don't write -- there's no hard, fast
9 guidelines, but it's just, you know -- I --
10 there's no, like, set guidelines for it, but
11 occasionally I do have to evict people from the
12 tavern where I work.
13 ATTORNEY FALLON: But there is a -- a
14 code of appropriate conduct for a tavern?
15 JUROR: There's an unwritten code.
16 ATTORNEY FALLON: Sure. Right.
17 JUROR: So -- Yeah.
18 ATTORNEY FALLON: I'm just curious,
19 what -- what -- what tavern do you work? I want
20 to make sure where I go.
21 JUROR: Yeah. The Crystal Corner Bar
22 here in Madison.
23 ATTORNEY FALLON: Crystal Corner Bar.
24 Okay. Very good. Um, anyone else? Okay.
25 Great. Um, next question:

1 How many on the panel, um, own a firearm
2 of some sort? Whether it's a -- a hunting rifle,
3 or a -- a handgun, or anything like that? Uh,
4 Mr. Johnson.

5 JUROR JOHNSON: Yes.

6 ATTORNEY FALLON: Uh, what -- what do
7 you own?

8 JUROR JOHNSON: Uh, I own two 12 gauge
9 shotguns, and then a 12 gauge deer hunting rifle.

10 ATTORNEY FALLON: Are -- are those all
11 for hunting purposes?

12 JUROR JOHNSON: Yes.

13 ATTORNEY FALLON: Okay. Um, yes, sir?

14 JUROR: I also own, um, two shotguns and
15 a 30.06 rifle. All --

16 ATTORNEY FALLON: That's Mr. --

17 JUROR: -- for hunting.

18 ATTORNEY FALLON: That's Mr. Drewsen.
19 Okay. Uh, were -- were you able to hear that
20 answer, Mr. Covington?

21 JUROR COVINGTON: No, I didn't.

22 ATTORNEY FALLON: Okay. Um --

23 JUROR DREWSSEN: Sure. Uh, I own two
24 shotguns and a 30.06, all for hunting purposes.

25 ATTORNEY FALLON: Okay. Um, anyone

1 else? Anyone else own any firearms of any kind?

2 Okay. Great.

3 Um, the next is, uh, let's deal with a
4 little bit about, uh, science and fiction. They
5 don't quite go together the way you might
6 imagine.

7 Um, how many watch television shows
8 like, um, *Bones*, *CSI: Las Vegas*, *CSI: New York*,
9 *CSI: Miami*? It's going to be *CSI: Madison*
10 pretty soon. I'm not sure. Um, how many watch
11 shows like that?

12 Okay. Very good. We've got lots of
13 hands. All right.

14 Um, how many would say, in your opinion,
15 based on your general knowledge, and the world,
16 and your own life experiences, that those shows
17 have realistic portrayals of what the science of
18 forensic law enforcement can do? How many say
19 they're very realistic? You don't believe in
20 flashbacks? Solving crimes?

21 All right. How about, um, somewhat
22 realistic? We got one hand in the back, two,
23 couple?

24 How many think not realistic at all?

25 Okay. Let's -- let's start there in the

1 first row. Uh, Ms. Austin, you'd say not
2 realistic at all. So you're a doubter?

3 JUROR AUSTIN: It just seems like -- I'm
4 sorry. Um, I just don't think they're realistic
5 in how, um -- I mean, by chance they come across
6 evidence, or by chance they come across, you
7 know, something that it just is so far out there.

8 ATTORNEY FALLON: Okay.

9 JUROR AUSTIN: Just doesn't seem real.

10 ATTORNEY FALLON: Any particular example
11 jump in your head at all?

12 JUROR AUSTIN: Well, I think one thing
13 that kind of comes to my mind is, um, about -- I
14 don't know how many years ago when ER first came
15 out, my sister is a nurse, and one of her first
16 comments was, you know, shows like that are so
17 unrealistic. So that always sticks in my head
18 when I see these types of TV shows.

19 THE COURT: Okay. Um, anyone else in the
20 first row think that they're --

21 JUROR: Do you mean unrealistic if you
22 don't watch them or unrealistic if you do watch
23 it?

24 ATTORNEY FALLON: No. I mean, if you
25 watch them --

1 JUROR: I don't watch them.

2 ATTORNEY FALLON: -- do you believe
3 what -- if you -- what you see is a realistic
4 portrayal of how crime is solved?

5 JUROR: Okay.

6 ATTORNEY FALLON: That --

7 JUROR: I don't watch it.

8 ATTORNEY FALLON: That's the point.

9 Okay. You don't watch them. Um -- All right.
10 How about in the second row? How many think it's
11 just not very realistic at all? Uh, we'll start
12 at the end. Go ahead, Ms. Hayman Ware.

13 JUROR HAYMAN WARE: It doesn't seem like
14 a crime can be solved in that short amount of
15 time, and then they always find someone to
16 confess, and, um, their DNA evidence comes back
17 really quickly. And, um, back to my husband,
18 who's a cop, he sits there and tells me every
19 part of it is unrealistic so...

20 ATTORNEY FALLON: All right. Well, so
21 you get first-hand coaching. Um, and, uh, Ms.
22 Edge?

23 JUROR EDGE: Yeah. First of all, it's a
24 TV show, so I have to assume that it's
25 entertainment. Second of all, I have nothing to

1 base it on, so I have no reason to believe any of
2 it is accurate, and it just seems in some cases
3 to be very far-fetched.

4 ATTORNEY FALLON: All right. If you
5 have no basis to, uh -- to -- to believe it,
6 are -- are you one who's, um, maybe from Missouri
7 and you want to be shown some -- something first
8 or --

9 JUROR EDGE: Excuse me.

10 ATTORNEY FALLON: Well, you're a --
11 you're a doubter?

12 JUROR EDGE: That was almost offensive.

13 ATTORNEY FALLON: Oh --

14 JUROR EDGE: No, I'm not from Missouri,
15 and, uh, it's entertainment. I --

16 ATTORNEY FALLON: Okay.

17 JUROR EDGE: -- just don't put more --
18 any more thought to it other than what it is.

19 ATTORNEY FALLON: Sure. Um, any --
20 anyone else in the second row? Mr. Drewsen?
21 Yeah. I think I take it for entertainment value
22 too. I think you see a lot of situations where
23 they're the ones doing it first with their guns
24 drawn. It doesn't really seem realistic.

25 COURT REPORTER: Maybe slow it down a

1 little. I'm -- I'm not understanding --

2 JUROR DREWSSEN: Okay.

3 COURT REPORTER: -- what you're saying.

4 JUROR DREWSSEN: Um, I kind of mumble.

5 Um, I said I take it for entertainment value. I
6 think a lot of times you see situations in these
7 TV shows that you can say that wouldn't happen in
8 real life.

9 For example, when the CSI are the first
10 on the scene with their guns drawn, to me that
11 doesn't seem realistic.

12 ATTORNEY FALLON: All right. Um, row
13 three? Yes. Um, Ms. Garske?

14 JUROR GARSKE: Yes.

15 ATTORNEY FALLON: Um, not ver -- not
16 very realistic? Why?

17 JUROR GARSKE: I just don't see it being
18 solved that quickly.

19 ATTORNEY FALLON: So time is clearly
20 a -- an issue?

21 JUROR GARSKE: Yes.

22 ATTORNEY FALLON: What about the manner,
23 uh -- what about the science? Uh, do you think
24 the science is actually capable of doing some of
25 the things that are depicted in the show?

1 JUROR GARSKE: I really -- I don't study
2 science so I don't --

3 ATTORNEY FALLON: Okay.

4 JUROR GARSKE: -- pay attention to that
5 part of it.

6 ATTORNEY FALLON: All right. Um, anyone
7 else in row three, uh, have a perspective? Yes,
8 sir. Mr. Williams?

9 JUROR WILLIAMS: I think it's just the
10 speed of how they solve the crime. That's
11 clearly unrealistic. Um, the best -- Miami has a
12 lot of murders every year. Apparently, this one
13 CSI group can solve them all with -- in 35
14 minutes.

15 ATTORNEY FALLON: Okay. Um, how about,
16 uh, in the, uh -- the last row? Anyone have a--
17 any particular reason why it's not very
18 realistic?

19 All right. Having heard that, we did
20 have some that thought it was somewhat realistic.
21 So for those who did -- who did think it was
22 somewhat realistic, how about a reason why?
23 Who -- How many thinks it might be somewhat
24 realistic? In the back. Sure. Ms. McDonald?

25 JUROR McDONALD: I have a little

1 experience in genetics and, uh, other than
2 finding it unrealistic that they have all the
3 state of the art equipment, uh, for doing the
4 forensics, it seems that some of the techniques
5 that they're using are real.

6 ATTORNEY FALLON: All right. Fair
7 enough. Um, did I see someone shaking their head
8 there? Mr. --

9 JUROR HUGHES: I agree with that.

10 ATTORNEY FALLON: -- Mr. Hughes?

11 JUROR HUGHES: Yeah.

12 ATTORNEY FALLON: All right. Anyone
13 else have a comment? Right here in, uh, row --
14 Ms. McGuire.

15 JUROR MCGUIRE: I'm a nurse by
16 background so the science makes sense to me.

17 ATTORNEY FALLON: Sure.

18 COURT REPORTER: Mr. Fallon, could you
19 identify her again, please?

20 ATTORNEY FALLON: Yeah, that's, uh, Ms.
21 McGuire.

22 JUROR MCGUIRE: I'm a nurse by
23 background so I agree that the -- the science
24 makes sense. The -- the ability to have all the
25 high state-of-the-art equipment is not as

1 reasonable, but some of the science is actually
2 there, present to the --

3 ATTORNEY FALLON: Sure. Uh, and that
4 leads me to my next question. Um, in -- in your
5 background, um, with science, have you had some
6 experience, for instance, with DNA technology?

7 JUROR MCGUIRE: Not personally, no,
8 but --

9 ATTORNEY FALLON: Okay.

10 JUROR MCGUIRE: -- you know, obviously
11 you get science and DNA background in your
12 schooling.

13 ATTORNEY FALLON: Sure. Um, and -- and
14 so you -- you studied a little bit of it when you
15 were in -- getting your nursing degree?

16 JUROR MCGUIRE: Yeah. Back 20 years ago
17 DNA isn't what it is now, but what it was.

18 ATTORNEY FALLON: You don't have to say
19 20 years ago. Um, I'm going to jump right up to
20 Ms. McDonald again. Uh, you said you had some
21 experience in genetics? Could you tell me a
22 little bit about that?

23 JUROR McDONALD: Uh, I -- I've studied,
24 uh, evolutionary systematics in which we used,
25 uh, some DNA technology to look at relationships

1 on species, and I work in the genetics
2 department, so I, um, as a -- administrator, but
3 I interact with some (inaudible).

4 COURT REPORTER: Excuse me. You
5 interact with --

6 ATTORNEY FALLON: Some geneticists
7 there. Um, the genetics that you work with, is
8 it all in the animal kingdom, or do you work with
9 human genetics as well?

10 JUROR McDONALD: Only in the sense that,
11 uh -- Well, I've never worked with human
12 genetics.

13 ATTORNEY FALLON: Okay.

14 JUROR McDONALD: We are interested in
15 how organisms are related to humans, and so
16 there -- there is information out there that
17 we've used but...

18 ATTORNEY FALLON: Okay. Very good.
19 Anyone else have any particular experience in,
20 um, uh, either DNA technology or anything a --
21 along those lines? Genetics? Um, Ms., uh Shea?
22 Pass that down to her.

23 JUROR SHEA: I've had several classes
24 that involve DNA, and DNA sequencing, and things
25 like that.

1 ATTORNEY FALLON: Okay. And, um, is
2 there a particular field that you're studying at
3 school right now? I mean, are you in science per
4 se or --

5 JUROR SHEA: I'm going into nursing.

6 ATTORNEY FALLON: Okay. Uh, how many
7 courses in, um, the DNA technology --

8 JUROR SHEA: Well, it's not totally in
9 DNA, but within classes like zoology, which is
10 animal bacteria, or animal biology and
11 bacteriology. We've had units all about just --
12 just DNA.

13 ATTORNEY FALLON: Okay. Um, well, how
14 many courses have you had in which there's been a
15 fair amount of discussion, uh, training on DNA
16 issues?

17 JUROR SHEA: At least two or three.

18 ATTORNEY FALLON: Okay. Fair enough.
19 Are you junior? Senior?

20 JUROR SHEA: I'm a sophomore.

21 ATTORNEY FALLON: Sophomore. All right.
22 Um, anyone else with any particular training in
23 science? We have here in the front row -- could
24 you pass the mike? Oh, wait, we got one in the
25 back row, so might as well start up there. Uh,

1 Mr. Oakes?

2 JUROR OAKES: Um, well, my undergraduate
3 degree is in molecular biology from the UW here.

4 ATTORNEY FALLON: All right.

5 JUROR OAKES: So --

6 ATTORNEY FALLON: All right.

7 JUROR OAKES: That was also, like, 20
8 years ago.

9 ATTORNEY FALLON: Um, did you, um,
10 practice in the field at all --

11 JUROR OAKES: Um --

12 ATTORNEY FALLON: -- were you
13 employed --

14 JUROR OAKES: -- bre --

15 ATTORNEY FALLON: -- in that area?

16 JUROR OAKES: -- briefly. I worked for
17 Becton Dickinson Microbiology Systems here town.

18 ATTORNEY FALLON: Okay. What -- what
19 kind of work -- I'm not familiar with that
20 outfit?

21 JUROR OAKES: They -- they make auger
22 for plating out bacteria and other, um -- um,
23 stuff for testing for like, uh, venereal
24 diseases, um, infections, that sort of stuff.

25 ATTORNEY FALLON: Okay.

1 JUROR OAKES: Um, so that was about all
2 I know also.

3 ATTORNEY FALLON: Very good. Um, I
4 think we had, Ms. um, Lowery here in the front
5 row. We'll get you a mike.

6 JUROR LOWERY: I have very minimal
7 experience, um, in school, and I worked for
8 Becton Dickinson for, like, a week maybe.

9 ATTORNEY FALLON: So --

10 JUROR LOWERY: So very minimal, but a
11 little bit.

12 ATTORNEY FALLON: All right. So you
13 just had a -- a smattering of it?

14 JUROR LOWERY: Um-hmm.

15 ATTORNEY FALLON: Okay. Very good. Uh,
16 and in row three? Uh, is that Ms. Harris?

17 JUROR HARRIS: I'm also a nurse, so --

18 ATTORNEY FALLON: Okay.

19 JUROR HARRIS: -- I've had limited
20 experience --

21 ATTORNEY FALLON: So you --

22 JUROR HARRIS: -- yeah. Yeah. And now
23 I work for -- well, with children with, um,
24 profound (inaudible).

25 ATTORNEY FALLON: Ah.

1 COURT REPORTER: I'm sorry, I didn't
2 understand.

3 ATTORNEY FALLON: You'll have to repeat.
4 She couldn't hear your last response.

5 JUROR HARRIS: I am -- I now work with
6 children that are profoundly retarded. That's in
7 the Wisconsin Center.

8 ATTORNEY FALLON: Um, so your
9 familiarity with DNA comes more from your formal
10 training as opposed to on-the-job stuff you're
11 doing now?

12 JUROR HARRIS: Correct.

13 ATTORNEY FALLON: Okay. Great. Okay.
14 Did we get everyone there? All right. I'm going
15 to change gears. And -- and one question here we
16 have, um, in anyone's work, whether it's, um,
17 nursing, or what have you, do you have occasion
18 to use industrial solvents or cleaning product --
19 um, products, such as paint thinner or bleach, on
20 a regular basis to clean things? Does anyone
21 have a fair amount of experience in that? Yes,
22 sir. Um, we'll start in the back row.
23 Mr. Hughes?

24 JUROR HUGHES: I'm a mechanic at the
25 post office. We have to clean up, uh, equipment

1 before we relubricate it, so we're always using
2 solvents and --

3 ATTORNEY FALLON: And do you -- Um, what
4 are some of the solvents that you use?

5 JUROR HUGHES: Mostly it's a
6 degreaser-type of thing, and then we take off
7 the -- the grease from the machinery and that
8 type of thing.

9 ATTORNEY FALLON: These degreasers, do
10 they -- they don't -- do they include bleach and
11 paint thinner, or they use a particular -- some
12 other type of product to degrease or pick up
13 that, uh --

14 JUROR HUGHES: We -- we do use bleach at
15 times, uh, for spills and things, and we're on
16 the spill team as well, and so to clean up blood
17 and -- and that type of thing, you have to use a
18 ten percent bleach product, and, um, we don't use
19 too much on the machinery, no, uh --

20 ATTORNEY FALLON: Sure.

21 JUROR HUGHES: -- the bleach, but...

22 ATTORNEY FALLON: All right. Great.
23 Um, let's start and come -- come back this way.
24 Row three. Yes, sir? Mr. Williams? Or, uh,
25 excuse me, Mr. Heinzl?

1 JUROR HEINZEL: Right. Um, I worked in
2 a number of food plants, and for food safety we
3 would use sanitizers. Um, we also have
4 blood-borne pathogen training, so if somebody was
5 cut or hurt, we'd have to use bleach to -- to
6 clean up that area as well.

7 ATTORNEY FALLON: All right. Um, yes?
8 Uh, Ms. Harris?

9 JUROR HARRIS: We use, uh -- it's Quan
10 (phonetic). You know. I don't know. It's a
11 combination of bleach with -- for all the
12 bacteria purposes, so -- but I'm not sure what it
13 consists of. You know, it's all set up for us
14 because of the problems with germs.

15 ATTORNEY FALLON: Sure. Sure. Um --
16 All right. Row two? Yes. Ms. Anderson.

17 JUROR ANDERSON: As I said, I work in a
18 day care, and one of the safe ways to clean
19 everything is bleach water, so with every room
20 has it locked up in a case, and that's what we
21 use at the end of the days to clean everything,
22 to sanitize --

23 ATTORNEY FALLON: Okay.

24 JUROR ANDERSON: -- before the next day.

25 ATTORNEY FALLON: Very good. And, uh,

1 right on the end? Mr. Covington?

2 JUROR COVINGTON: I work at, uh, Oscar
3 Mayer's Food Corporation and Kraft, and we use
4 a -- a lots of type of bleach. One of them, we
5 use, uh, B-K. It's a bleach, but it's stronger
6 than bleach (unintelligible). And it involves,
7 uh, cleaning of steel. We use, uh, AC 300
8 (unintelligible). And it's very strong --

9 COURT REPORTER: I'm sorry, AC --

10 JUROR COVINGTON: And then we use a
11 sanitizer --

12 COURT REPORTER: Wait. Sir? Sir?

13 ATTORNEY FALLON: Oop, oop, oop. She's
14 having a little hard time. Now, just slow down
15 for her. She's -- can't keep up with you.

16 COURT REPORTER: I just don't
17 understand. I don't understand what he's saying.

18 JUROR COVINGTON: When we sanitizing
19 something, we use, uh, Swisher (phonetic), and we
20 just spray it on there and that kill all the
21 bacteria.

22 ATTORNEY FALLON: All right. Okay.

23 JUROR COVINGTON: And we use Enforce.
24 We can't mix B-K --

25 COURT REPORTER: I'm sorry --

1 JUROR COVINGTON: -- with Enforce --
2 COURT REPORTER: I don't --
3 JUROR COVINGTON: -- that's for sure.
4 THE COURT: We're -- we're not -- we're not
5 hearing it here. Just a moment, please. Uh, he had
6 said AC 300 at one point and that was one of the
7 things I think you missed, but the -- the last thing
8 you didn't hear.
9 COURT REPORTER: No.
10 THE COURT: So could we go over that,
11 please, so we can get a record?
12 JUROR COVINGTON: Uh, sure. We use AC
13 300. That's a acid. And it cleans steel.
14 ATTORNEY FALLON: Sure.
15 JUROR COVINGTON: You want to clean some
16 steel from corrosive. If something was on it,
17 just cut it out.
18 ATTORNEY FALLON: Right.
19 JUROR COVINGTON: And --
20 ATTORNEY FALLON: What was the other
21 product you used?
22 JUROR COVINGTON: We use, uh, Swisher to
23 sanitize and kill all the bacteria.
24 COURT REPORTER: What was --
25 ATTORNEY FALLON: And that product was?

1 JUROR COVINGTON: Uh, it's Swisher. Uh,
2 it kills the bacteria.

3 ATTORNEY FALLON: All right. Right
4 here. Okay. Ms. McGuire.

5 JUROR MCGUIRE: When I was doing
6 hands-on nursing, uh, again, for blood spills and
7 blood-borne pathogens, we used a bleach solution
8 that usually includes some other solvent,
9 fifteen, twenty years ago, that now is most of
10 the time, but mainly bleach.

11 ATTORNEY FALLON: Okay. Yes, ma'am?

12 JUROR: Same thing as Ms. McGuire for,
13 um, blood spills for patients, or any type of
14 thing that we think we might need bleach for --
15 for a patient, but they kind of are moving away
16 to other things like Hepacide-Quat and things
17 like that right now.

18 ATTORNEY FALLON: Okay. That was Ms.
19 Lowery. Very good. Let -- There's just two,
20 uh -- couple of areas left that I wanted to talk
21 about, and, um, I'm going to begin with this, uh,
22 general statement, which I'm sure that almost
23 everyone here has heard at one point in their
24 life, and probably many times, and let me ask it
25 this way:

1 Generally speaking, is there anyone who
2 disagrees with this statement, "where there is
3 smoke, there is fire"? How many have actually
4 heard that phrase? How many have used that
5 phrase? Okay.

6 Um, as a general rule, how many think
7 that's true? That where there's smoke, there's
8 probably a fire? And we've used it
9 metaphorically, but how many would agree with
10 that?

11 Um, let's do that in reverse then. How
12 many don't think it's a truism? All right.
13 Good. Let's -- let's -- let's start with the
14 naysayers. Uh, we'll, uh, begin with
15 Mr. Williams.

16 JUROR WILLIAMS: It's a cliché, and I --
17 most clichés, life is more complicated than that.
18 There aren't absolutes so...

19 ATTORNEY FALLON: Okay.

20 JUROR WILLIAMS: I mean, it's
21 obviously -- We've all used "where there's smoke
22 there's fire" but, I mean, has that determined,
23 you know, to look at something differently
24 because of the cliché? I mean, I just think life
25 is more complicated than, "where there's smoke,

1 there's fire." I've used it, obviously, but...

2 ATTORNEY FALLON: Do you think there's
3 some truth in a phrase or is it --

4 JUROR WILLIAMS: Well, like all clichés,
5 there's some truth. There wouldn't be clichés if
6 they weren't somewhat truthful.

7 ATTORNEY FALLON: Right. All right.
8 Um, right here. Um, Ms. um, Anderson?

9 JUROR ANDERSON: Um, I don't believe it
10 because there's too many variables in this day
11 and age. I mean, yes, when there's a fire,
12 there's smoke, but there's so many other things
13 that could cause you to believe there's a fire,
14 and then you get there and there isn't one.

15 ATTORNEY FALLON: Right.

16 JUROR ANDERSON: So I'm just -- have a
17 feeling that you need more than one thing to
18 point you to say that, oh, yeah, there's a fire.

19 ATTORNEY FALLON: All right. So that
20 you think the cliché has, um, spent its time?

21 JUROR ANDERSON: I agree that when you
22 see smoke, there's a fire, because a fire causes
23 smoke, but I'm not going to say every time I see
24 smoke, I'm going to yell, fire, fire.

25 ATTORNEY FALLON: Fair enough. Um, yes.

1 Back row, Ms. Miletic?

2 JUROR MILETIC: I would treat it as a
3 hypothesis. So, basically, it's a hypothesis.
4 There is a -- there is a smoke, there must be a
5 fire, so now you have to go prove and
6 (unintelligible).

7 COURT REPORTER: I'm sorry, could you
8 repeat that last part?

9 JUROR MILETIC: I said I would treat it
10 as a hypothesis, so, then, um, let's go and prove
11 or disprove it.

12 ATTORNEY FALLON: All right. Um, at the
13 end? Mr., uh, Johnson?

14 JUROR JOHNSON: Um, as -- as part of the
15 management team for my company, uh, we get a lot
16 of he said-she saids, uh, from employees that may
17 have a gripe against each other, and I'm -- I'm
18 one of the people that has to go kind of
19 investigate that to see what the truth is, and I
20 would say 99 percent of the time, 95 percent of
21 the time, it's just trying to get somebody else
22 in trouble in the -- in the job. You know.

23 ATTORNEY FALLON: All right. So for
24 you -- your experience, it's an overused cliché?

25 JUROR JOHNSON: Absolutely.

1 ATTORNEY FALLON: All right. Fair
2 enough. Uh, yes?

3 JUROR: I'm going to come at this from a
4 more literal standpoint. As a Boy Scout, tried
5 to light a lot of fires. On more than one
6 occasion there was smoke and no fire.

7 ATTORNEY FALLON: All right. I use that
8 as introduction to this -- to this concept,
9 because this, as you may have, um, surmised, is
10 likely to be somewhat of an issue in the case, so
11 let's talk a little bit about this. I'm sure
12 Counsel will agree.

13 Um, has anyone read, seen or heard
14 anything in the media about people who claim they
15 falsely confessed to a crime? How many have
16 heard something or -- about that? Very good.
17 Hands up. All right. Um, let's see. Let's
18 start -- We'll go in the back row and we'll work
19 our way forward again. Uh, let's start with Ms.
20 McDonald. I believe she had her hand up first.

21 JUROR McDONALD: What do you want me to
22 say? I mean --

23 ATTORNEY FALLON: What --

24 JUROR McDONALD: -- do you --

25 ATTORNEY FALLON: What --

1 JUROR McDONALD: -- want me to respond
2 to?

3 ATTORNEY FALLON: What have you read,
4 seen or heard about that?

5 JUROR McDONALD: I've been reading
6 stories about, uh, torture, uh, in which, uh,
7 people are, uh -- the only way they can get away
8 from torture is just to confess, and then when
9 they're released, they, um -- they tell their
10 true story.

11 ATTORNEY FALLON: Sure. Um, have you
12 heard about it in any other context other than in
13 a -- a torture scenario?

14 JUROR McDONALD: Um, in some -- I think
15 in -- in -- in a couple of cases where there were
16 long-term police questioning of particular
17 suspects, they just gave up. The suspect gave up
18 and -- and said what the police wanted them to
19 say.

20 ATTORNEY FALLON: All right. Um, very
21 good. Uh, someone else in the back row? Yes,
22 sir. Mr., uh, Oakes?

23 JUROR OAKES: Nothing very specific but,
24 I mean, through the years you hear about, um, you
25 know, convicts have been in jail for 20 years and

1 then recant -- you know, what -- they take back
2 what they said 20 years earlier, or, you know, if
3 there's a famous case, uh, you hear about people
4 writing letters to the police and confessing
5 when, obviously, they're, you know -- they
6 couldn't have done it. So just, in general,
7 there are people who say they've done one thing
8 and it turns out not to be true for one reason or
9 another.

10 ATTORNEY FALLON: Like the JonBenet
11 Ramsey case for one?

12 JUROR OAKES: Sure. Exactly.

13 ATTORNEY FALLON: All right. Yes, sir?

14 JUROR: Yes, I agree with what he just
15 said.

16 ATTORNEY FALLON: Okay. That would be
17 Mr., uh, Hughes? All right. Um, yes, Ms. Shea?

18 JUROR SHEA: Well, I agreed with him
19 also, that you hear about it in the media and
20 people take back their stories.

21 ATTORNEY FALLON: Um, how about, uh, uh,
22 Ms., uh Durst?

23 JUROR DURST: I would agree with what
24 previous jurors have said.

25 ATTORNEY FALLON: But you've heard some

1 things about it?

2 JUROR DURST: I don't have anything
3 specific.

4 ATTORNEY FALLON: All right. Um, anyone
5 have a specific recollection or circumstance of
6 a -- of a -- of a case of interest to them?
7 Let's go -- this end here with, uh, Ms.
8 Blankenship?

9 JUROR BLANKENSHIP: I just was briefly
10 listening to the radio and they kept referencing
11 those three lacrosse players from the
12 university --

13 ATTORNEY FALLON: Right.

14 JUROR BLANKENSHIP: And that story
15 apparently fell through and they've all been
16 acquitted now.

17 ATTORNEY FALLON: Right. Um, but there
18 wasn't a -- attribution to them that they
19 actually admitted any involvement in the offense,
20 was there?

21 JUROR BLANKENSHIP: I didn't follow it
22 that closely. It just seemed like that is
23 sensitized to that.

24 ATTORNEY FALLON: Sure. Um, yes, right
25 here. Uh, Ms. McGuire?

1 JUROR MCGUIRE: In addition to some of
2 the cases brought forward, one of the ones
3 recently here would have been more of somebody
4 accusing of a crime that didn't occur, and she
5 confessed that it was fake. The Audrey Sealer
6 case.

7 ATTORNEY FALLON: All right. Audrey
8 Sealer. Sure. All right. All right. Right
9 next door here, to, uh, Ms. Lowery?

10 JUROR LOWERY: Um, the one that I
11 remember, um -- and I'm not really even sure of
12 all the details -- was all of those people in
13 Illinois they were letting go, a couple years ago
14 even maybe. I don't know even how long ago.
15 They were letting go because they said they were
16 having false confessions, and now they're doing
17 something down there to, I guess, maybe taping or
18 videotaping confessions now.

19 ATTORNEY FALLON: Um-hmm.

20 JUROR LOWERY: But I'm not even sure
21 what --

22 ATTORNEY FALLON: The circumstances?

23 JUROR LOWERY: Yeah.

24 ATTORNEY FALLON: Right.

25 JUROR LOWERY: I just kind of heard

1 about it.

2 ATTORNEY FALLON: Sure. Okay. Well,
3 let's, um -- let's go to the next question that
4 that would logically bring, and that is, um --
5 Well, how likely is it -- Let's use that as a
6 phrase. How likely is it that a person would
7 claim they had an active role in the commission
8 of a crime and later claimed they did not? I
9 mean, is that, in your experience, a common
10 occurrence or an uncommon occurrence?

11 Let's -- How many think that would be
12 a -- a common occurrence? Anybody?

13 How about uncommon? Okay. Fair enough.
14 What would some of the reasons be in your mind
15 for someone to at first claim involvement in the
16 commission of a serious crime and then later say,
17 no, no, that wasn't right, I -- I didn't mean to
18 say that?

19 What would -- What are some of the
20 reasons you think that would motivate somebody to
21 do that? Let's start with Mr., um, uh, Hughes in
22 the back there?

23 JUROR HUGHES: I think attention.

24 ATTORNEY FALLON: Wait for your
25 microphone there.

1 JUROR HUGHES: They want some attention
2 or some public -- some attention.

3 ATTORNEY FALLON: Okay. All right. Ms.
4 Miletic?

5 JUROR MILETIC: Fear.

6 ATTORNEY FALLON: Fear? Let's talk a
7 little bit about that. Why?

8 JUROR MILETIC: Because of fear,
9 consequences. If you, uh, don't see something,
10 you might get in trouble, so you say it, and at
11 that moment it probably -- maybe it's, uh -- you
12 think it's better for you to confess than -- than
13 not to confess, or to tell the truth. I don't
14 know.

15 ATTORNEY FALLON: Well, what would be a
16 greater fear in your thinking, then, in the
17 hypothesis you've given me --

18 JUROR MILETIC: Um-hmm.

19 ATTORNEY FALLON: -- what would be the
20 greater fear, uh, of not confessing to a very
21 serious crime? What would be worse than
22 confessing to a very serious crime, and being
23 subject to prosecution and ridicule, and -- What
24 would be worse? What would be a greater fear?

25 JUROR MILETIC: It depends. I mean, we

1 have all heard of, um, women that have been
2 abused by their husband and husbands don't end up
3 in jail and the women end up with husbands at
4 home.

5 Or in this particular situation -- I
6 don't know if I can specifically talk about this
7 case, I can see how fear would motivate a person
8 to confess.

9 ATTORNEY FALLON: Okay.

10 JUROR MILETIC: Like, for example, the
11 uncle did -- was re -- re -- released once from
12 jail, so the question could be, well, if he get
13 away with this crime, if I, um, cause, anyhow,
14 fear.

15 ATTORNEY FALLON: Okay.

16 JUROR MILETIC: Yeah.

17 ATTORNEY FALLON: All right. Um, anyone
18 else have an explanation of why someone might do
19 that? Yes. Ms. Harris?

20 JUROR HARRIS: I think sometimes people
21 get so anxious when they're in a certain setting
22 that they'll say things that, um -- just to try
23 to get out of the situation.

24 ATTORNEY FALLON: Um-hmm.

25 JUROR HARRIS: So lot of it's anxiety?

1 ATTORNEY FALLON: What would be some of
2 the manifestations of anxiety do you think?

3 JUROR HARRIS: I think having people
4 around that are, um, you know, asking you a lot
5 of questions, and feeling that they're a lot more
6 powerful than you are --

7 ATTORNEY FALLON: Um-hmm.

8 JUROR HARRIS: -- so you become anxious.

9 ATTORNEY FALLON: What kind of physical
10 manifestations do you think the person would have
11 under those circumstances if they were going to
12 confess to committing a serious matter or offense
13 when -- when they really didn't? If they were --
14 If -- You're saying that they're being questioned
15 and asked a lot of questions by authority figures
16 or power figures, would -- would we see some
17 manifestations of this anxiety on the person do
18 you think?

19 JUROR HARRIS: Yeah. I -- I think, you
20 know, you'd have your head down and, um, you
21 wouldn't want to elaborate on a lot of things,
22 but when someone's asking you questions, you go
23 ahead and you try to answer the questions what I
24 think what they would want to hear.

25 ATTORNEY FALLON: All right. Um, anyone

1 else? Um, we'll go back to the back row. Ms.
2 McDonald?

3 JUROR McDONALD: This -- this has to do
4 with the psychology experiment that was done
5 decads ago, uh, in terms of social pressures to,
6 uh, respond to a situation, uh, the length of
7 a -- a stick, and most people succumb to the
8 social pressure of, uh, calling the stick longer
9 or shorter than it actually was, and they
10 actually reviewed it or viewed it as themself
11 from their own perspectives.

12 ATTORNEY FALLON: Now, was that study
13 not going in group dynamics as opposed to an
14 individual, one-on-one; if I'm correct?

15 JUROR McDONALD: Uh, it -- it was in a
16 group, yes.

17 ATTORNEY FALLON: Right.

18 JUROR McDONALD: Um, and one person
19 was --

20 ATTORNEY FALLON: And eight people say
21 this is, uh --

22 JUROR McDONALD: Hmm.

23 ATTORNEY FALLON: -- really green and
24 the oth -- and --

25 JUROR McDONALD: Yes.

1 ATTORNEY FALLON: -- and -- and the one
2 person thinks it's blue?

3 JUROR McDONALD: Um-hmm.

4 ATTORNEY FALLON: But --

5 JUROR McDONALD: And -- and most of the
6 people responded that it was green, even though
7 they thought it was blue.

8 ATTORNEY FALLON: It was blue.

9 JUROR McDONALD: Um-hmm.

10 ATTORNEY FALLON: Right. But that
11 also -- but that was a group dynamic. Uh --

12 JUROR McDONALD: Um-hmm.

13 ATTORNEY FALLON: -- that's several
14 people involved as --

15 JUROR McDONALD: Um-hmm.

16 ATTORNEY FALLON: -- opposed to a
17 one-on-one or two-on-one --

18 JUROR McDONALD: Um-hmm.

19 ATTORNEY FALLON: -- discussion --

20 JUROR McDONALD: Um-hmm.

21 ATTORNEY FALLON: -- right?

22 JUROR McDONALD: Um-hmm.

23 ATTORNEY FALLON: Okay. Let's see. We
24 did have some hands -- Yes, sir. In the front
25 row. Mr. Nehrbass?

1 JUROR NEHRBASS: If you're, like, trying
2 to protect somebody. Like, you could admit
3 something if you're trying to protect somebody,
4 like, your kid or something, like, say their
5 parent.

6 ATTORNEY FALLON: So if you're trying
7 to -- Yeah. If you're trying to protect someone
8 else, you might say you did something. In other
9 words, take the rap for --

10 JUROR NEHRBASS: Right.

11 ATTORNEY FALLON: -- somebody else --

12 JUROR NEHRBASS: Right.

13 ATTORNEY FALLON: -- or, perhaps,
14 dissuade, um, somebody from looking -- or
15 accusing a loved one of something?

16 JUROR NEHRBASS: Right.

17 ATTORNEY FALLON: Okay. Good. Um,
18 anyone else have a reason why someone might do
19 that? Yes. Uh, ma'am -- Ms., uh, Schmitt?

20 JUROR SCHMITT: Yes. Okay. Um, the
21 only other thing, like, in general, that I could
22 think of is if someone was coercing you to give a
23 confession.

24 ATTORNEY FALLON: Okay. And what would
25 be some of the indicators in your mind of -- of a

1 coercing to getting a confession?

2 JUROR SCHMITT: Um, indicators as far
3 as, like, how you would be able to tell if that
4 person was being coerced?

5 ATTORNEY FALLON: Yes.

6 JUROR SCHMITT: Gosh, I don't know. I
7 was just thinking in general terms, but...

8 ATTORNEY FALLON: Okay.

9 JUROR SCHMITT: That's all I can come up
10 with.

11 ATTORNEY FALLON: All right. Um, anyone
12 else? Yes. Um, Ms., uh, Anderson?

13 JUROR ANDERSON: I go back to the
14 almighty buck. A lot of people do things they
15 normally wouldn't do for money.

16 ATTORNEY FALLON: Okay. Does anyone
17 think the age of a person might be a factor?
18 Yes? No? Sure.

19 Anyone think that age would not be a
20 factor?

21 How about intelligence? Yes? That's
22 a -- a factor? Sure.

23 Does anyone believe that simply age or
24 intelligence alone is certainly reason enough for
25 someone to say they did something when, in fact,

1 they didn't? All right. No thoughts on that.
2 Very good.

3 All right. I'm going to go into one
4 more area, and then I'm going to pass the
5 questioning to my colleague.

6 Um, a little discussion on distinction
7 between guilt and punishment. That's the
8 context. All right? So let's begin with a
9 couple of easier questions.

10 How many of you have been or are parents
11 of teenagers who were of below average, uh,
12 intelligence or gifts? We got, uh, two?

13 Um, Mr. Johnson and Mr. Hughes. Very
14 good.

15 Let's -- let's start with you two guys.
16 Let's start with Mr. Hughes first. When --
17 when -- Was it a son or a daughter?

18 JUROR HUGHES: Son.

19 ATTORNEY FALLON: Son? All right. When
20 your son misbehaved, did you hold him responsible
21 for his behavior?

22 JUROR HUGHES: Up to a point.

23 ATTORNEY FALLON: All right. Let's talk
24 about that. How -- how did you manage the
25 challenge?

1 JUROR HUGHES: All right. He was tested
2 by a neuropsychologist and, uh, he was found to
3 have Central Integrative Disorder, and, uh, it's
4 something in his neurological makeup that, um, he
5 really wasn't aware of what he was doing. He was
6 kind of in his own world and, um, they cautioned
7 us to over-discipline him.

8 ATTORNEY FALLON: To not
9 over-discipline?

10 JUROR HUGHES: Not to over-discipline.

11 ATTORNEY FALLON: Sure.

12 JUROR HUGHES: That, uh, he wasn't
13 really aware of some of the things he was doing,
14 so...

15 ATTORNEY FALLON: All right. So how --
16 in -- in -- in walking that line, how were you
17 able to determine or, um, to discipline when he
18 needed to be disciplined?

19 JUROR HUGHES: Really, I didn't know if
20 I'd made a mistake sometimes, and, um, it was
21 hard. You know, it was hard to determine that
22 with him. If -- if I had known that -- if he was
23 laughing about it, and he was, uh, kind of making
24 fun of the situation, then I would, uh, tend to
25 discipline. If, uh, he showed no signs of humor

1 whatsoever, and, uh, if he was doing something
2 inappropriate, then I would have had to sit him
3 down and really talk to him.

4 ATTORNEY FALLON: So if it looked like
5 to you he really didn't appreciate at all the
6 significance of the behavior he was engaged in,
7 you'd go light on him and just kind of sit him
8 down and --

9 JUROR HUGHES: Yes. I'd, uh, try to
10 talk with him, reason with him, and, uh, that was
11 his problem. He -- he -- he had some
12 reasoning -- he doesn't have the deductive
13 reasoning where he can put his ducks in a row and
14 make sense out of things.

15 ATTORNEY FALLON: Sure. Did he know
16 right from wrong?

17 JUROR HUGHES: Somewhat. You know, he
18 didn't know that he was in -- inappropriate at
19 times.

20 ATTORNEY FALLON: Sure. Fair enough.
21 Mr. Johnson?

22 ATTORNEY JOHNSON: I have a 15-year-old
23 son with kind of a more advanced case of ADHD,
24 uh, than you typically see, um, which leaves --
25 leaves him susceptible to just kind of do things

1 on a whim because he thinks they're fun, or it
2 could be fun, without thinking consequences
3 through the end. Um, we do hold him accountable
4 for all those.

5 ATTORNEY FALLON: Okay.

6 JUROR JOHNSON: Unfortunately, he thinks
7 of the consequences after he's already done
8 whatever he does, so...

9 ATTORNEY FALLON: Little impulse issues?

10 JUROR JOHNSON: Absolutely.

11 ATTORNEY FALLON: Okay. Um, but you do
12 hold him accountable for his behavior?

13 JUROR JOHNSON: Yes.

14 ATTORNEY FALLON: He -- he knows right
15 from wrong?

16 JUROR JOHNSON: Yes.

17 ATTORNEY FALLON: All right. He just
18 sometimes forgets to think about that?

19 JUROR JOHNSON: Right. He forgets to
20 think about this could be wrong and -- before he
21 does it.

22 ATTORNEY FALLON: Okay. Anyone else?
23 All right. Um, how many would agree with this
24 statement; that, um, 16-year-olds are not or
25 should not be held as responsible for their

1 behaviors as 18-, 19-, or 20-year-olds as a
2 general rule? Does anyone adhere to that?

3 All right. Let's start in the back row
4 with Ms. Miletic.

5 JUROR MILETIC: Um, I think, um,
6 mentally, um, we don't develop at age 16.
7 Physically, our bodies are more developed than
8 our, um, mental abilities, and, especially,
9 thinking does not develop fully at age 16.

10 ATTORNEY FALLON: Um, by age 16, would
11 you agree with the proposition that a 16-year-old
12 knows right from wrong?

13 JUROR MILETIC: Yes, but that doesn't
14 mean that a person cannot do wrong.

15 ATTORNEY FALLON: Cannot what?

16 JUROR MILETIC: I think person knows
17 right from wrong, but a -- a person can still do
18 wrong.

19 ATTORNEY FALLON: Sure.

20 JUROR MILETIC: Uh-hmm.

21 ATTORNEY FALLON: But should they be
22 held accountable for that? Should there be
23 consequences for doing wrong?

24 JUROR MILETIC: I think it's all
25 situational. It depends on the situation. I

1 definitely think to a certain degree they have
2 to, but, um, it all depend -- depends on the
3 circumstances.

4 ATTORNEY FALLON: All right. Anyone
5 else have a comment on that?

6 Anyone else thinks 16-year-olds should
7 be not -- held not as accountable? Yes, sir.
8 Mr., um, Williams?

9 JUROR WILLIAMS: When you say "not as
10 accountable" are you saying not as accountable as
11 an adult as someone --

12 ATTORNEY FALLON: Right.

13 JUROR WILLIAMS: -- that's of 18 or
14 older?

15 ATTORNEY FALLON: Right.

16 JUROR WILLIAMS: Well, I would agree
17 that the -- the psychological makeup of a
18 16-year-old -- and as a history teacher and
19 working with teenage boys and girls -- to -- to
20 hold them to the same standards as you or I -- I
21 mean, I just -- I totally -- I think we all go
22 through our lives and think to ourselves that we
23 did things when we were 16 we wouldn't do when we
24 were 24 and 25.

25 That said, should there be consequences

1 for actions that one take -- that person knows
2 that they're doing right or wrong? Absolutely.
3 But you're asking me, shouldn't be held to the
4 same standard as me? I mean, I would find that
5 to be somewhat foolish.

6 I have more life experience, as you have
7 more life experience as I do. It should be held
8 to at least some mitigating circumstances from
9 our own experiences.

10 ATTORNEY FALLON: All right. Anyone
11 disagree with that?

12 How many -- Would everyone agree with
13 that? Yes? No? Okay. Very good.

14 Do you see a distinction between holding
15 someone accountable for their behavior and then
16 determining a punishment for that behavior? Is
17 there a distinction?

18 How many think there's a distinction
19 there between, say, a -- a finding of guilt, for
20 instance, and a --

21 ATTORNEY FREMGEN: Judge, could we have
22 a sidebar on that question, please?

23 THE COURT: Yes.

24 (Discussion off the record.)

25 ATTORNEY FALLON: All right. I have

1 just one -- one other circumstance that I wanted
2 to talk with you about.

3 Before I do, could we have a -- a --
4 Let's have a little discussion. I want to talk
5 with Counsel about something first.

6 (Discussion off the record.)

7 ATTORNEY FALLON: Well, after a
8 discussion with Court and Counsel, I'm going to
9 stop here. My colleague, uh, Mr. Fremgen, is
10 going to pick up and cover some of the things
11 that I was going to cover in any event. So I'm
12 going to pass the, uh, questioning to, uh -- to
13 Mr. Fremgen, and -- and thank you very much for
14 your time.

15 ATTORNEY FREMGEN: Thank you. Good
16 morning again. What's, uh, nice about going
17 second, despite the introduction, I don't have to
18 ask a lot of questions. Mr. Fallon kind of
19 covers most of it.

20 I've been through the jury process
21 before as well. We -- Not as long as you folks.
22 Four hours seemed to be a lot to me, so I'm going
23 to try to keep it as -- as simple and as short as
24 possible.

25 The, uh, jury process, and this process

1 of selecting a jury, yesterday, I believe the
2 Judge explained to you that we're trying to pick
3 a fair and impartial juror, and a lot of the
4 questions that we asked you, and the reason why
5 you're here, is because you answered questions
6 that indicated that you can set aside opinions,
7 you can listen to the evidence, and you can
8 follow the instructions.

9 But I -- In regards to jury selection, I
10 think it's just as important for you 30
11 individuals to make a decision within yourself to
12 decide if you're a good juror. Do you think that
13 you can actually be a juror in this case more so
14 than, maybe, whether Mr. Fallon and I believe
15 that? Besides, part of the process and part of
16 why Mr. Fallon asked you to raise your hands and
17 interact and -- and talk, uh, because that's the
18 process for you as well, to be able to say, can I
19 be a fair and impartial juror? So please feel
20 free to interrupt me. Raise your hands.

21 You, uh -- Fortunately, the jury
22 selection process is somewhat shorter than normal
23 because you were, uh, kind enough to fill out
24 65-question questionnaire, and, uh, it -- it
25 allows us to eliminate a lot of the questions

1 that we would normally ask in this process, or,
2 as of yesterday, the individual voir dire.

3 I -- I think it's only fair that -- that
4 we have to proc -- do the process somewhat as
5 well. I mean, you are -- we are -- been
6 introduced to you, and I want to introduce myself
7 to you as well in this process, and as the Judge
8 pointed out, I'm an attorney in Oshkosh. I don't
9 think any of you know me. I've only been to
10 Madison once for court, so I never been in
11 this -- this building more than the last two
12 days.

13 And, uh, I also have children as well,
14 and my hobbies are similar to a lot of your
15 hobbies. I like to golf and be involved in youth
16 hockey, um, and I like to watch CSI as well. So
17 you're no different than the rest of us.

18 One of the questions that, again, you
19 all answered appropriately yesterday, was you
20 could set aside any opinions and you can presume
21 Mr. Dassey innocent.

22 What I want to ask you in that regard
23 is, what if Mr. Dassey chose not to testify?
24 Would that affect your opinion of his innocence
25 right now?

1 Would anyone feel differently about him
2 being presumed innocent if he decided I'm not
3 going to talk to you folks when it comes time for
4 the jury? For the trial?

5 Would it change your opinions?

6 Does anyone here feel that you want to
7 hear from both sides at any trial? You think
8 it's important to hear from both sides? You
9 agree with that? Just about everyone? Okay.

10 Now, if Mr. Dassey were to testify,
11 would you agree that he, along -- as well as all
12 other witnesses, that you will consider all the
13 testimony the same way?

14 Now, let me ask -- preface it this way:
15 You decide who you want to believe, and you
16 decide what weight you want to give any witness.
17 That's entirely up to you. But as you sit there
18 listening to it, you would listen to him no
19 different than, let's say, a police officer.

20 Ms. Ware, would that be okay? You would
21 be willing to listen to Mr. Dassey and give him
22 the same consideration as if a police officer
23 testified?

24 JUROR HAYMAN WARE: Yes.

25 ATTORNEY FREMGEN: The reason I asked

1 you, is you have a police officer for a husband,
2 and I thought that would -- made a nice segue.
3 Does that -- Your relationship, uh, with your
4 husband -- Let me ask you a couple questions
5 about that. Do you feel that police officers,
6 themselves, are more truthful than other
7 witnesses?

8 JUROR HAYMAN WARE: Not necessarily. I
9 think there's all kinds of police officers just
10 like there's all kinds of lawyers or all kinds of
11 social workers.

12 ATTORNEY FREMGEN: Touché. So if I can
13 just follow up a little bit, so you would agree
14 that -- that there are times that witnesses --
15 Well, let -- let's not say witnesses. There are
16 times people lie; correct?

17 JUROR HAYMAN WARE: Yes.

18 ATTORNEY FREMGEN: And that would be no
19 different than a police officer?

20 JUROR HAYMAN WARE: Correct.

21 ATTORNEY FREMGEN: Or a lawyer?

22 JUROR HAYMAN WARE: Correct.

23 ATTORNEY FREMGEN: Not today though.
24 Now, there -- In that regard -- In regards to
25 sometimes people lie, would it also be correct --

1 would anyone -- I guess would you agree that
2 there are times when people just are mistaken?
3 Anyone agree with that?

4 Let me ask, uh, someone who hasn't had
5 their hand up, much. Um, Ms. Rasmussen, you
6 raised your hand?

7 JUROR RASMUSSEN: Well, it's fairly
8 common if you have 12 people seeing something,
9 you're going to get 12 different stories, because
10 no one can see the same thing the same way. We
11 all have different experiences, different filters
12 to how we experience everything by what we've
13 seen in our past.

14 ATTORNEY FREMGEN: So if you saw
15 something one way, and another person saw it a
16 different way, you're not necessarily lying?

17 JUROR RASMUSSEN: Right.

18 ATTORNEY FREMGEN: Neither is the other
19 person?

20 JUROR RASMUSSEN: Right. It just means
21 then that we were focusing on different things
22 and maybe didn't remember the part that the other
23 person was talking about.

24 ATTORNEY FREMGEN: I saw a couple other
25 hands. Right next to Ms., uh, Tedder?

1 JUROR: I think sometimes people just
2 maybe mis -- misspeak and just made an error, but
3 not necessarily mean to lie, but...

4 JUROR FREMGEN: Besides not -- different
5 perceptions as Ms. Rasmussen pointed out,
6 sometimes you just misspeak?

7 JUROR: Correct.

8 ATTORNEY FREMGEN: And that's -- would
9 you say that's common?

10 JUROR: Um, maybe for some people.

11 ATTORNEY FREMGEN: Okay. When you hear
12 about -- When you watch TV -- A lot of you
13 yesterday would answer the questions that you --
14 you watch TV or listen to the radio. Uh, when
15 you hear, for instance, on TV, uh, a news report
16 that somebody was arrested for a crime, those
17 reports happen rather routinely in the news, do
18 you think it's a common reaction or do you have
19 this reaction that, well, you must have done it?

20 Is that a knee-jerk reaction? A normal
21 knee-jerk reaction? Does anyone agree that that
22 can be a knee-jerk reaction at times?
23 Mr. Hughes, you had your hand up?

24 JUROR HUGHES: I think it can. I -- I
25 believe it can be.

1 ATTORNEY FREMGEN: Okay. And let me ask
2 you this, and picking on you, Mr. Hughes, just
3 now because you raised your hand. Sorry.

4 JUROR HUGHES: Yes.

5 ATTORNEY FREMGEN: Uh, and all you've
6 heard is the two-minute, maybe 30-second news
7 bit?

8 JUROR HUGHES: Yes.

9 ATTORNEY FREMGEN: Did you have nothing
10 else to go on as to -- far -- as far as whether
11 the person may or may not have done it; correct?

12 JUROR HUGHES: No.

13 ATTORNEY FREMGEN: So it -- you might be
14 wrong; correct?

15 JUROR HUGHES: Yes.

16 ATTORNEY FREMGEN: But it's just common
17 nat -- it's human nature; right?

18 JUROR HUGHES: Yeah.

19 ATTORNEY FREMGEN: Ms., uh, Miletic?
20 Miletic?

21 JUROR MILETIC: I didn't raise my hand.

22 ATTORNEY FREMGEN: You were -- you were
23 shaking your head. I saw you shaking your head.
24 Sorry.

25 JUROR MILETIC: Well, it's true. I

1 mean, I live in this society where people are not
2 arrested. I have never witnessed anyone being
3 arrested. So if my neighbor's arrested, I would
4 think like, my gosh, what happened? I wouldn't
5 necessarily think he's guilty, but I would say
6 like, wow, what did he do? I would, um, still
7 wait to see the verdict, but it would be a
8 surprise to me.

9 ATTORNEY FREMGEN: So you would -- the
10 better process would be, let's see what the
11 actual --

12 JUROR MILETIC: Oh, definitely, but I
13 would definitely, like, peek through the window
14 and see what's going on and -- because that
15 doesn't happen. Not in my life.

16 ATTORNEY FREMGEN: Okay. There was
17 another hand. Uh, Ms. McDonald. Same answers
18 though?

19 JUROR McDONALD: I think sometimes a
20 knee-jerk reaction is to think, well, this person
21 may be guilty for this reason, uh, but I think
22 that subsequent information may change one's
23 mind.

24 ATTORNEY FREMGEN: So if you receive
25 more information --

1 JUROR McDONALD: Um-hmm.

2 ATTORNEY FREMGEN: But in the newscasts,
3 you don't usually get the one and never --

4 JUROR McDONALD: No --

5 ATTORNEY FREMGEN: -- see it again?

6 JUROR McDONALD: -- and it's usually on
7 petty crimes that, uh, sort of go by the wayside.

8 ATTORNEY FREMGEN: Okay. Oh, I'm sorry.
9 No. 7? Ms. Shea. You had your hand up, too.
10 I'm sorry.

11 JUROR SHEA: I guess when I see it on
12 TV, I kind of assume that police had some reason
13 for arresting that person, that they must be --
14 and don't mean, I guess, that I just assume
15 guilt, but they must have had a reason for it, so
16 I'm trusting that that's why they arrested them.

17 ATTORNEY FREMGEN: Okay. Would you
18 agree, though, there are times when people are
19 arrested and --

20 JUROR SHEA: Yeah, and it was --

21 ATTORNEY FREMGEN: -- was wrong?

22 JUROR SHEA: Yes.

23 ATTORNEY FREMGEN: Okay. One of the
24 instructions the Judge will give you eventually
25 within this trial, is that at the end when it's

1 your time to get together and decide guilt or
2 innocence, that you have to do it -- it's called
3 beyond a reasonable doubt, and that burden is
4 actually on the prosecutor only. That's where
5 yesterday we talked a lot about presumption of
6 innocence. Do you need us to prove something to
7 you? Well, it's the prosecutor that actually has
8 to prove each and every element of the offense.

9 Now, if, for instance, the State were
10 able to convince you, two out of three of the
11 elements absolutely perfect, evidence clearly
12 establishes that, but doesn't establish the
13 third, under that instruction you'd have to say,
14 not guilty. Does anyone feel that's just unfair
15 that if the State's able to truly convince you
16 with -- on two elements, but not on the third,
17 that, well, close enough. Do you think that
18 that's just not -- Ms. Rasmussen?

19 JUROR RASMUSSEN: Uh, if by elements are
20 you speaking two or three charges or two or three
21 elements of a specific charge?

22 ATTORNEY FREMGEN: Good question. As a
23 lawyer, we -- we tend to think everyone
24 understands what we're talking about. Each
25 charge -- The Judge will instruct you each charge

1 has separate elements to the charge. Um, and an
2 element just simply means it's something that the
3 State would have to prove.

4 And my question is, essentially, if the
5 State convinces you beyond a reasonable doubt to
6 all but one element, are you willing to find the
7 defendant not guilty because the instruction is
8 you must find him guilty on all the elements
9 beyond a reasonable doubt? Is that a fair burden
10 on the State? Even though they came pretty darn
11 close, you think that's pretty fair?

12 JUROR RASMUSSEN: I think that's fair.

13 ATTORNEY FREMGEN: Okay. Any -- anyone
14 else -- anyone think it's not fair? It's just
15 not a fair burden on the prosecutor to come so
16 close, but not to be able to prove it in my
17 hypothetical? Not fair?

18 Okay. Mr. Fallon stole my thunder with
19 the JonBenet Ramsey case. That was a great
20 example. But let me ask you about -- follow up
21 on Mr. Fallon's questions about false
22 confessions.

23 He asked you about certain factors,
24 whether or not you thought that would play a part
25 in whether a person's, uh, confession was true or

1 false.

2 Let me ask you, does anyone feel that a
3 maturity level of a person is a factor that you
4 should consider in that same question? That same
5 set of questions Mr. Fallon asked? Mr., uh,
6 Johnson, you're rais -- you're shaking your --
7 I'm sorry. Mr. Williams. Sorry. You're shaking
8 your head?

9 JUROR WILLIAMS: Obviously, maturity has
10 something to do with it. I mean, I had a
11 six-year-old, and, you know, did you hit your
12 brother? You're going to get a different answer
13 if I asked her if she was 15 so...

14 ATTORNEY FREMGEN: Not necessarily.
15 Because I know.

16 JUROR WILLIAMS: Hopefully.

17 ATTORNEY FREMGEN: Okay. All right.
18 Anyone else, uh, agree? Ms., uh --

19 JUROR LOWERY: Lowery.

20 ATTORNEY FREMGEN: -- Lowery.

21 JUROR LOWERY: Um, I kind of agree with
22 him, because my two-year-old, if you asked her
23 who did it, she always says, Jenaya, Jenaya,
24 Jenaya. And Jenaya is gone for eight hours out
25 of the day. And she's usually the only one at

1 home, so she's the only one, that -- you know,
2 that could possibly do it. So, I mean, a
3 two-year-old versus, you know --

4 ATTORNEY FREMGEN: Sure.

5 JUROR LOWERY: -- another age where you
6 can probably understand a little better and get a
7 correct answer.

8 ATTORNEY FREMGEN: Jenaya is not that
9 naughty of a girl?

10 JUROR LOWERY: Oh, yeah. Jenaya is the
11 naughtiest.

12 ATTORNEY FREMGEN: She's a good fall
13 guy, huh?

14 JUROR LOWERY: Yeah.

15 ATTORNEY FREMGEN: Anyone else agree
16 that that's -- Just generally agree?

17 JUROR: Sure.

18 ATTORNEY FREMGEN: Another factor I
19 wanted to ask you if you agree might have an
20 impact on this topic of false confessions, and
21 that is, whether it's coming from authority.
22 Does anyone agree that parents or principals at
23 schools, police, might have more of an impact in
24 questioning a person than, say, if it's a friend?
25 All right. Ms. -- Ms. Tedder? Is that -- You

1 were shaking your head yes?

2 JUROR TEDDER: Yes.

3 ATTORNEY FREMGEN: Do you agree that
4 that's -- that can also be a factor?

5 JUROR TEDDER: Yes. I think it can be
6 intimidating, so, yes.

7 ATTORNEY FREMGEN: So intimidation can
8 sometimes be a factor in that?

9 JUROR TEDDER: Yes.

10 ATTORNEY FREMGEN: Is that fairly
11 agreeable by the group? Everyone's shake -- I'm
12 not going to call on all of you, we'll be here
13 all day. But that that's a common theme among --
14 Okay.

15 I just have one last question, and it's
16 a question I've asked just about every time since
17 a case I had seven years ago. I won't go into
18 that case. Does anyone here have any strong
19 dislike for attorneys that you just simply cannot
20 sit on a jury? It came up, and I just want to
21 make sure that -- Okay. Well, I appreciate your
22 answers. Thank you, very much.

23 THE COURT: All right. That -- that
24 concludes the individual voir dire -- or, excuse me,
25 the general voir dire done by the prosecutor and the

1 defense. We now are going to have what are called
2 peremptory challenges. That is the, uh -- the
3 lawyers are --

4 ATTORNEY FALLON: I -- I was just -- I
5 would like to take about a five-minute break.

6 THE COURT: All right. Okay. We'll
7 have the -- Well, let's do this, um -- It's
8 10:05. Uh, 10:15?

9 ATTORNEY FALLON: That would be great.

10 THE COURT: All right.

11 (Recess had at 10:05 a.m.)

12 (Reconvened at 10:25 a.m.)

13 THE COURT: Back on the record. Ladies and
14 gentlemen, you're discovering how ten minutes of
15 court time rapidly turns into fifteen to twenty
16 minutes real time, but we're back, and we're going
17 to do the peremptory challenges at this point. Uh,
18 preemprory challenges are an opportunity for each
19 side to strike a certain number of jurors so that we
20 finally reach the final panel -- panel number,
21 which, in this case, is 16. So let's -- let us
22 begin.

23 (Peremptory Challenges.)

24 THE COURT: I'll ask the clerk to read the
25 names of those who have been selected for the final

1 jury. If your name is called, please stand.

2 THE CLERK: Thomas Oakes, Timothy Hughes,
3 Heather Rasmussen, Rachel Tedder, Leah Shea, Kristen
4 Durst, Thomas Heinzl, Becky Foss, Robert Covington,
5 Cynthia Edge, Renee Schmitt, Janeen Running, Judy
6 Orth, Jane McGuire, Tamara Lowery, and Ashley
7 Shippy.

8 THE COURT: All right. Would the persons
9 whose names weren't called rise, please, and -- and
10 we'll do the -- clear the courtroom.

11 (Wherein jurors not selected are
12 escorted out of the courtroom.)

13 I'm going to ask, uh, the jury clerk
14 to -- to seat the people so we can get a seating
15 chart. She's going to seat you in a -- in a
16 manner so we have a chart for Monday.

17 I'm just going to talk to you very, very
18 briefly. You're going to get some additional
19 instructions at the back of the room. You've
20 been selected this, a sequestered jury. You
21 won't officially become sequestered until Monday
22 morning when you're sworn in in the -- in the
23 Manitowoc County Courthouse, but I want to
24 reiterate to you that it is absolutely essential
25 that you not read, listen to, or watch any news

1 accounts of this case, whether on radio,
2 television, newspapers or the internet, and that
3 you do not discuss this with anyone, any matter
4 involving this case or your involvement in it.
5 That is, uh -- that is, actually, a court order.
6 I ask that you be diligent in following it.

7 Now, I'm going to ask that you exit the
8 jury box. Go to the back. One second.

9 THE CLERK: Would you wait one second? I
10 just want to make sure I have --

11 ATTORNEY FALLON: Judge, before you
12 excuse them, could, uh, counsel and I, uh --

13 THE COURT: Sure.

14 ATTORNEY FALLON: -- remind you about a
15 previous discussion we had?

16 THE COURT: Oh.

17 (Discussion off the record.)

18 THE COURT: One more thing. Counsel have
19 suggested that I remind you that there may be
20 matters on television that your family sees and they
21 may want to talk to you about it. Uh, don't --
22 don't engage in any of that discussion. Don't watch
23 it. Don't talk to them. You might advise family
24 members if -- if there are matters that they run
25 into either on the internet or television that, uh,

1 it -- it's out of bounds for you and you can't talk
2 about it. Does everybody understand that
3 instruction? Thank you. All right. Uh, have you
4 got the -- the list?

5 THE CLERK: Yeah, that's fine.

6 THE COURT: All right.

7 THE CLERK: Thank you.

8 THE COURT: We'll see you Monday.

9 (Court stands adjourned at 10:50 a.m.)

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1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.

16
17
18
19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
22
23
24
25

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

vs.

BRENDAN R. DASSEY,

DEFENDANT.

JURY TRIAL
TRIAL DAY 1
Case No. 06 CF 88

DATE: APRIL 16, 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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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 9:07 a.m.)

2 THE COURT: Court will call the case of
3 State of Wisconsin vs. Brendan R. Dassey, 06 CF 88.
4 Appearances, please.

5 ATTORNEY KRATZ: The State appears by
6 Calumet County District Attorney Ken Kratz, also
7 appearing is Tom Fallon from the Department of
8 Justice, Norm Gahn from the Milwaukee County
9 D.A.'s Office, all appearing as special
10 prosecutors.

11 ATTORNEY FREMGEN: Attorney Mark Fremgen
12 and Attorney Raymond Edelstein appear with
13 Brendan Dassey.

14 THE COURT: At this point I'd ask the clerk
15 to swear the jury in, please.

16 THE CLERK: Would the jurors please rise?
17 Please raise your right hands.

18 (Jurors sworn.)

19 THE COURT: Counsel, I'm going to give some
20 preliminary instructions for the record. We have
21 previously discussed these and, uh, both sides agree
22 to the instructions to be given today; is that
23 correct, Mr. Kratz?

24 ATTORNEY KRATZ: Yes.

25 THE COURT: Mr. Fremgen?

1 ATTORNEY FREMGEN: Yes, Judge.

2 THE COURT: All right. Before the trial
3 begins, there are certain instructions you should
4 better have to understand your functions as a juror
5 and how you should conduct yourself during the
6 trial. Your duty is to decide the case based only
7 on the evidence presented and the law given to you
8 by the Court. Do not let any personal feelings of
9 bias or prejudice against any such things as race,
10 religion, national origin, sex or age affect your
11 deliberations.

12 Do not begin your deliberations and
13 discussion of the case until all the evidence is
14 presented and I have instructed you on the law.
15 Do not discuss this case among yourselves or with
16 anyone else until your final deliberations in the
17 jury room.

18 We will stop or recess from time to time
19 during the trial. You may be excused from the
20 courtroom when it is necessary for me to hear
21 legal arguments from the lawyers. If you come in
22 contact with the parties, lawyers, or witnesses,
23 do not speak with them. For their part, the
24 parties, lawyers, and witnesses will not contact
25 or speak with the jurors.

1 Should you be exposed to any reports or
2 communications from any source concerning the
3 case during the trial, you should report that
4 information to the jury bailiff. The Court is
5 aware that many of you've been exposed to
6 publicity concerning this case before you were
7 selected to serve as a juror. Each of you has
8 committed to base your verdict only on the
9 evidence introduced during the trial. It is of
10 vital importance to the parties and the sanctity
11 of the court process that you remain true to this
12 commitment.

13 Anything you may see or hear outside the
14 courtroom is not evidence. You are to decide the
15 case solely on the evidence offered and received
16 at trial.

17 Evidence is, first, the sworn testimony
18 of witnesses, both on direct and
19 cross-examination, regardless of who called the
20 witness.

21 Second, the exhibits the Court has
22 received.

23 And, third, any facts to which the
24 lawyers have agreed, or stipulated, or which the
25 Court has directed you to find.

1 Attorneys for each side -- side have the
2 right and the duty to object to what they
3 consider are improper questions asked of
4 witnesses and to the admission of other evidence
5 which they believe is not properly admissible.

6 You should not draw any conclusions from
7 the fact that an objection was made. By allowing
8 testimony or other evidence to be received over
9 the objection of counsel, the Court is not
10 indicating any opinion about the evidence. You
11 jurors are the judges of the credibility of the
12 witnesses and the weight of the evidence.

13 You are not required to, but you may
14 take notes during the trial except during the
15 opening statements and closing arguments. The
16 Court will provide you with materials. In taking
17 notes, you must be careful that it does not
18 distract you from carefully listening to and
19 observing the witnesses.

20 You may rely on your notes to refresh
21 your memory during deliberations. Otherwise,
22 keep them confidential. Your notes will be
23 collected by the jury bailiff after each day's
24 session and kept in a secure place until the next
25 day of trial. After the trial, the notes will be

1 collected and destroyed.

2 You will not have a copy of the written
3 transcript of the trial testimony available for
4 use during your deliberations. You may ask to
5 have specific portions of the testimony read to
6 you. You should pay careful attention to all the
7 testimony, because you must rely primarily on
8 your memory of the evidence and testimony
9 introduced during the trial.

10 To assist you in evaluating the
11 evidence, I will now read to you portions of the
12 specific jury instructions for the offenses with
13 which the defendant is charged. I will read them
14 to you in their entirety at the close of the
15 evidence.

16 Count 1. Count 1 of the Information
17 charges the defendant with first degree
18 intentional homicide, as party to a crime -- to
19 the crime. Section 939.05 of the Wisconsin
20 Criminal Code provide that whoever's concerned in
21 the commission of a crime is a party to that
22 crime and may be convicted of that crime although
23 that person did not directly commit it.

24 The State contends that the defendant
25 was concerned in the commission of the crime of

1 first degree intentional homicide by either
2 directly committing it or by intentionally aiding
3 and abetting the person who directly committed
4 it.

5 If a person intentionally aids and abets
6 the commission of a crime, then that person is
7 guilty of the crime as well as the person who
8 directly committed it. A person intentionally
9 aids and abets the commission of a crime when
10 acting with knowledge or belief that another
11 person is committing or intends to commit a
12 crime, he knowingly either assists the person who
13 commits the crime, or is ready and willing to
14 assist, and the person who commits the crime
15 knows of the willingness to assist.

16 To intentionally aid and abet the crime
17 of first degree intentional homicide, the
18 defendant must know that another person is
19 committing or intends to commit the crime of
20 first degree intentional homicide and have the
21 person -- and have the purpose to assist the
22 commission of that crime.

23 Before you may find the defendant guilty
24 of first degree intentional homicide as a party
25 to the crime, the State must prove by evidence

1 which satisfies you beyond a reasonable doubt
2 that the defendant directly committed the crime
3 of first degree intentional homicide or
4 intentionally aided and abetted the commission of
5 that crime.

6 All 12 jurors do not have to agree on
7 whether the defendant directly committed the
8 crime of first degree intentional homicide or
9 aided and abetted the commission of the crime.
10 However, each juror must be convinced beyond a
11 reasonable doubt that the defendant was concerned
12 in the commission of the crime in one of those
13 ways.

14 First degree intentional homicide, as
15 defined in 940.01 of the Criminal Code of
16 Wisconsin, is committed by one who causes the
17 death of another human being with the -- the
18 intent to kill that person or another.

19 Before you may find the person -- the
20 defendant guilty of first degree intentional
21 homicide, the State must prove by evidence which
22 satisfies you beyond a reasonable doubt that the
23 following two elements were present:

24 Number one, Brendan Dassey caused the --
25 the death of Teresa Halbach, or aided and abetted

1 another in causing the direct -- the death of
2 Teresa Halbach.

3 "Cause" means that the defendant's acts
4 were a substantial factor in producing the death.

5 Number two, Brendan Dassey acted with
6 the intent to kill Teresa Halbach, whether he did
7 so directly or aided and abetted another.

8 "Intent to kill" means that the
9 defendant had the mental purpose to take the life
10 of another human being, or was aware that his
11 conduct was practic -- practically certain to
12 cause the death of another human being.

13 While the law requires that the
14 defendant acted with intent to kill, it does not
15 require that intent exists for any particular
16 length of time before the act is committed. The
17 act need not be brooded over, considered, or
18 reflected upon for a week, a day, an hour, or
19 even a minute. There need not be any appreciable
20 time between the formation of the intent and the
21 act.

22 The intent to kill may be formed at
23 anytime before the act, including the instant
24 before the act, and must continue to exist at the
25 time of the act.

1 You cannot look into a person's mind to
2 find intent. Intent to kill must be found, if
3 found at all, from the defendant's acts, words
4 and statements, if any, and from all the facts
5 and circumstances in this case bearing upon
6 intent. Intent should not be confused with
7 motive. While proof of intent is necessary to a
8 conviction, proof of motive is not.

9 Motive refers to a person's reason for
10 doing something. While motive may be shown as a
11 circumstance to aid in establishing the guilt of
12 a defendant, the State is not required to prove
13 motive on the part of the defendant in order to
14 convict.

15 Evidence of motive does not, by itself,
16 establish guilt. You should give it the weight
17 you believe it deserves under all of the
18 circumstances.

19 You're satisfied beyond a reasonable
20 doubt at the conclusion of the trial that the
21 defendant directly committed both elements of
22 first degree intentional homicide, or that the
23 defendant intentionally aided and abetted the
24 commission of that crime, you should find the
25 defendant guilty. If you are not so satisfied,

1 you must find the defendant not guilty.

2 Count 2 charges the defendant with
3 mutilating a corpse, also as a party to a
4 crime -- to the crime. Section 939.05 of the
5 Criminal Code of Wisconsin, provide that whoever
6 is concerned in the commission of a crime is a
7 party to that crime and may be convicted of that
8 crime although that person did not directly
9 commit it.

10 The State contends that the defendant
11 was concerned in the commission of the crime of
12 mutilating a corpse by either directly committing
13 it or by intentionally aiding and abetting the
14 person who directly committed it.

15 If a person intentionally aids and abets
16 the commission of a crime, then that person is
17 guilty of the crime as well as the person who
18 directly committed it. Person intentionally aids
19 and abet the com -- abets the commission of a
20 crime when acting with knowledge or belief that
21 another person is committing or intends to commit
22 a crime, he either knowingly assists the person
23 who commits the crime, or is ready and willing to
24 assist, and the person who commits the crime
25 knows of the willingness to assist.

1 To intentionally aid and abet the crime
2 of mutilating a corpse, the defendant must know
3 that another person is committing or intends to
4 commit the crime of mutilating a corpse and have
5 the purpose to assist the commission of that
6 crime.

7 Before you may find the defendant guilty
8 of mutilating a corpse as a party to the crime,
9 the State must prove by evidence which satisfies
10 you beyond a reasonable doubt that the defendant
11 directly committed the crime of mutilating a
12 corpse or intentionally aided and abetted the
13 commission of that crime.

14 All 12 jurors do not have to agree
15 whether the defendant directly committed the
16 crime of first degree, uh -- or uh, mutilating a
17 corpse or aided and abetted the commission of the
18 crime. However, each juror must be convinced
19 beyond a reasonable doubt that the defendant was
20 concerned in the commission of the crime in one
21 of those ways.

22 Mutilating a corpse, as defined in
23 Section 940.11 (1) of the Criminal Code of
24 Wisconsin, is violated by one who mutilates a
25 corpse with intent to conceal a crime, or avoid

1 apprehension, prosecution, or conviction for a
2 crime.

3 Before you may find the defendant guilty
4 of this offense, the State must prove by evidence
5 which satisfies you beyond a reasonable doubt
6 that the following two elements were present:

7 Number one, Brendan Dassey mutilated the
8 corpse of Teresa Halbach, or aided and abetted
9 another in mutilating the corpse of Teresa
10 Halbach.

11 Number two, in mutilating the corpse of
12 Teresa Halbach, or in aiding and abetting another
13 in mutilating her corpse, Brendan Dassey acted
14 with the intent to conceal the crime. This
15 requires that the defendant acted with the
16 purpose to conceal a crime.

17 You cannot look into a person's mind to
18 find out about intent. Intent must be found, if
19 found at all, from the defendant's acts, words
20 and statements, if any, and from all the facts
21 and circumstances in the case bearing upon
22 intent.

23 If you are satisfied beyond a reasonable
24 doubt at the conclusion of the trial that Brendan
25 Dassey directly committed both elements of this

1 offense, or that Brendan Dassey directly aided
2 and another -- aided and abetted another in the
3 commission of the crime, you should find the
4 defendant guilty. If you are not so satisfied,
5 you must find the defendant not guilty.

6 Count 3 charges the defendant with first
7 degree sexual assault by use or threat of a
8 dangerous weapon, also as a party to a crime.
9 Section 939.05 of the Criminal Code of Wisconsin
10 provides that whoever is concerned in the
11 commission of a crime is a party to that crime
12 and may be convicted of that crime although the
13 person did not directly commit it.

14 The State contends that the defendant
15 was concerned in the commission of the crime of
16 first degree sexual assault by either directly
17 committing it or by intentionally aiding and
18 ab -- and abetting the person who directly
19 committed it. The person intentionally aids and
20 abets the commission of a crime, then that person
21 is guilty of a crime as well as the person who
22 directly committed it.

23 Person intentionally aids and abets the
24 commission of a crime when acting with knowledge
25 and belief that another person is committing or

1 intends to commit a crime, he knowingly either
2 assists the person who commits the crime or is
3 ready and willing to assist, and the person who
4 commits the crime knows of the willingness to
5 as -- to assist.

6 To intentionally aid and abet the crime
7 of first degree sexual assault, the defendant
8 must know that another person is committing or
9 intends to commit the crime of first degree
10 sexual assault and have the pers -- have the
11 purpose to assist the commission of that crime.

12 Before you may find the defendant guilty
13 of first degree sexual assault as a party to a
14 crime, the State must prove by evidence which
15 satisfies you beyond a reasonable doubt that the
16 defendant directly committed the crime of first
17 degree sexual assault or intentionally aided and
18 abetted the commission of that crime.

19 All 12 jurors do not have to agree
20 whether the defendant directly committed the
21 crime of first degree sexual assault or aided
22 and -- and abetted the commission of that crime.
23 However, each juror must con -- be convinced
24 beyond a reasonable doubt that the defendant was
25 concerned in the commission of the crime in one

1 of those ways.

2 First degree sexual assault, as defined
3 in Section 940.225 (1)(b) of the Criminal Code of
4 Wisconsin, is committed by one who has sexual
5 intercourse with another person without consent
6 and by use or threat of a dangerous weapon.

7 Before you find the defendant guilty of
8 this offense, the State must prove by evidence
9 which satisfies you beyond a reasonable doubt
10 that the following three elements were present:

11 Number one, the defendant had sexual
12 intercourse -- course with Teresa Halbach.

13 Number two, Teresa Halbach did not
14 consent to the sexual intercourse.

15 Number three, the defendant had sexual
16 intercourse with Teresa Halbach by use or threat
17 of a dangerous weapon. This requires that the
18 defendant actually used or threatened to use the
19 dangerous weapon to compel Teresa Halbach to
20 submit to sexual intercourse.

21 If you are satisfied beyond a reasonable
22 doubt that all three elements of first degree
23 sexual assault have been proven, you should find
24 the defendant guilty. If you are not so
25 satisfied, you must find the defendant not

1 guilty.

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

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

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

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

22 The term "reasonable doubt" means a
23 doubt based upon reason and common sense. It is
24 a doubt for which a person can be given -- uh,
25 for which a reason can be given arising from a

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

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

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

17 The lawyers will now make opening
18 statements. The purpose of an opening statement
19 is to give the lawyers an opportunity to tell you
20 what they expect the evidence will show so that
21 you can better understand the evidence as it is
22 introduced during the trial. I must caution you,
23 however, that the opening statements are not
24 evidence. Mr. Kratz? Juror Covington, were you
25 able to hear me when I gave these instructions?

1 JUROR COVINGTON: Yes.

2 THE COURT: All right. Let's proceed.

3 ATTORNEY KRATZ: Can everybody hear me
4 okay? As our tech guy comes up here, I wanted to
5 say good morning. Thank you for the service that
6 you have offered in this case. Uh, you are from
7 Dane County. You're not a Manitowoc County jury,
8 and so it's a great inconvenience, I know, for
9 all of you to sit and listen to this very
10 important case. But let me assure you that this
11 process, the process that you've been going to in
12 the next couple of weeks, um, may include one of
13 the most important decisions, uh, that you're
14 ever going to have to make.

15 Uh, it is a, uh -- a daunting task for
16 citizens to go through, uh, but it is, uh,
17 obviously important not just to Mr. Dassey, but
18 to the, uh, Halbach family, to the friends of the
19 family, uh, of Teresa Halbach, to the citizens of
20 Manitowoc County, uh, where we currently, uh, are
21 holding this trial.

22 Uh, the trial, itself, or my opening
23 statement, itself, uh, is not intended to be
24 evidence. The Judge already told you that. Um,
25 but it will be a little bit lengthy, uh, in that

1 we have to take what, uh, may be six or seven
2 weeks of testimony into a trial, uh, and at least
3 in this case fit it into about three days, uh,
4 worth of testimony. And much of the evidence in
5 this case is not contested, uh, will be
6 stipulated to, meaning agreed to, uh, and so you,
7 the jurors, since you don't have the same basis
8 of knowledge that the lawyers do, uh, you have to
9 be told the background and a lot of those facts,
10 and so I'll be doing that in my opening statement
11 as well as having some witnesses testify, uh,
12 about that, uh -- about that as well.

13 Uh, you will notice around the courtroom
14 are, um, screens, uh, which, um, do, in most
15 regards, um, have the, uh, text or photos or the
16 videotapes that you'll be watching. Uh, they are
17 meant to assist you and give you different places
18 to, uh -- to see those things, and so I wanted to
19 encourage you to do that as well.

20 Let me also remind you that this is not,
21 um, a closed system in that you can't, uh,
22 participate. Uh, the one way that you can
23 participate, uh, is if one of you needs a break
24 for some reason. Uh, I need to let you know that
25 if you need a break, uh, either, if you're, um,

1 not concentrating well enough, or you just need
2 a -- a regular, uh, kind of other kind of break,
3 just raise your hand, all right? Get my
4 attention or the Judge's attention, and we'll
5 take a break.

6 And, certainly, during this opening
7 statement, you'll get at least one, and perhaps
8 two, breaks, uh, so that you're able to remain
9 fresh, you're able to, um, listen to the very
10 important statements that myself and the defense
11 will be giving in this opening statement. All
12 right?

13 First thing I want to talk about is an
14 introduction of the prosecution team. That is,
15 the people that are sitting at or near this
16 table. My name's Ken Kratz. It's the first
17 chance I've had to address each of you. Uh, I am
18 a district attorney. I'm the D.A. of Calumet
19 County, which is the county just east, uh, of
20 Manitowoc, of, uh -- excuse me, just west of
21 Manitowoc, uh, where we are, uh, right now.

22 Uh, and I am the lead counsel. Nothing
23 special about that term. It just means that, uh,
24 I have, uh, coordinated the, uh, investigation
25 and prosecution of this case, uh, and will be

1 assisting in the presentation of the case as
2 well.

3 Um, Mr. Fallon, who you already heard
4 from, is an assistant, uh, district attorney.
5 Um, Mr. Fallon, uh, works for the Department of
6 Justice in Madison. Uh, he's the gentleman in
7 the middle, and, uh, will be another prosecutor
8 in this case.

9 And, finally, Mr. Gahn is a Milwaukee
10 County Assistant District Attorney. Uh, Mr. Gahn
11 will be presenting the parts of the case, you'll
12 notice, where Mr. Gahn has expertise. Uh, that
13 is in DNA evidence, uh, and in the sciences and
14 some of the other places. So I at least wanted
15 to let you know why we're involved.

16 We, by the way, are helping, we're doing
17 a favor, if you will, for Manitowoc County. Uh,
18 the three prosecutors that have been assigned
19 responsibility for this, uh, important case and
20 the case involving Steven Avery, uh, which were
21 the same prosecutors, the same prosecution team,
22 uh, assisted Manitowoc in, um -- in the efforts
23 of the prosecution.

24 Two lead investigators were involved in
25 this case. Uh, they are, um, Mr. Mark Wiegert,

1 who is the gentleman in the glasses. Mr. Wiegert
2 is an investigator with the Calumet County
3 Sheriff's Department. And Mr. Tom Fassbender,
4 who is seated next to him, works, again, for the
5 Department of Justice, Division of Criminal
6 Investigation.

7 You're going to learn in this case that
8 several hundred law enforcement officers were
9 involved. Um, that the personnel and the search
10 efforts in this case were, uh, overwhelming. In
11 fact, you're probably going to learn that this
12 was one of the largest, if not, the largest, at
13 least by resources, investigation, criminal
14 investigation, homicide investigation in
15 Wisconsin history. And because of the scope of
16 this case, because of the size of this case, it
17 required investigators to coordinate or to make
18 sure that everything was done, uh, not only
19 properly, but leadership, uh, and direction was,
20 uh -- was certainly required in this case.

21 If I could have, uh, just a minute.
22 We're going to try to fix at least these two
23 screens so that all of the, uh, text shows, but
24 that doesn't mean I'm going to stop. I'm a
25 lawyer so I can -- I can just keep, uh -- keep

1 talking.

2 Opening statements, as the Judge told
3 you, are an opportunity to tell you what we think
4 the evidence is going to show. But more than
5 that, it's a, uh -- it's a roadmap. It's an
6 overview. Since evidence comes in in bits and
7 pieces, some people describe, uh, trials as, um,
8 puzzles, jigsaw puzzles, if you will, and how
9 evidence may fit into there.

10 You need to know how each little piece
11 of evidence in this two-week trial is going to
12 fit into the big picture. Is going to fit into
13 whether or not Brendan Dassey is guilty of the
14 three offenses for, uh, which he has been
15 charged.

16 Uh, I've told you, and you know, and
17 most of you, in fact, I think all of you, uh,
18 have indicated in your questionnaires that you
19 were at least somewhat familiar with the Steven
20 Avery, uh, case. But you didn't hear the
21 evidence in that case. Um, and some of that
22 evidence, as I mentioned, may or may not be
23 contested, but because of the importance of this
24 case, it's still necessary to tell you the whole
25 story. It's necessary to explain all of the

1 physical evidence, as well as the evidence that
2 may be directed towards, uh, Brendan Dassey, and
3 some of that evidence, again, will be physical
4 evidence and some is going to be statements. Uh,
5 and so we intend, uh, to tell you about all of
6 that, certainly, during this opening statement
7 and, uh -- and during this process.

8 The Judge told you that Mr. Dassey's
9 been charged with three separate offenses; first
10 degree intentional homicide, mutilating a corpse
11 and first degree sexual assault. He told you the
12 elements. That is, what it is the State has to
13 prove. And we certainly intend to do that.

14 All right. The first legal concept that
15 I want to talk about is party to the crime. The
16 Judge has instructed you that party to the crime
17 is a, uh -- a concept, a -- a form of criminal
18 liability, that, uh, is committed either when
19 somebody commits a crime, themselves, or when
20 they aid and abet the commission of the crime.

21 Now, this is the law. Judge Fox will
22 tell you what the law is. So whether you think
23 this is a good idea or a bad idea, it's the law
24 and you have to follow this law. And so the
25 description or the explanation of, as an example,

1 what aiding and abetting means, is important for
2 you to know.

3 The Judge has told you that a defendant
4 can aid and abet the commission of crime, um, if
5 he assists somebody who commits it or,
6 importantly, and what you might hear in this
7 case, as the evidence may show in this case, uh,
8 quite a bit, is that the individual, in this
9 case, Brendan Dassey, stood ready and willing to
10 assist, and that the actor, in this case, Steven
11 Avery, uh, was an individual who knew of
12 Brendan's willingness to aid and abet. All
13 right?

14 Now, I'm telling you that this early in
15 the case because this is an important concept.
16 It's important for you to understand what the
17 criminal liability is, and, again, whether you
18 agree with or don't agree with that concept, with
19 the concept of party to the crime, it's something
20 the Judge tells you you have to accept and you
21 have to adopt.

22 I'm going to introduce you to a lovely
23 young woman. This is Teresa Halbach. Ms.
24 Halbach was 25 years old on Halloween of 2005.
25 You're going to hear evidence in this case that

1 Ms. Halbach was single. That Ms. Halbach was a
2 college graduate. Ms. Halbach was a freelance
3 photographer. She was a daughter. She was a
4 sister. She was a friend. And she had her whole
5 life ahead of her.

6 You're also going to hear evidence that
7 all of that came to an end on Halloween of 2005.
8 This story, this case, begins at about 8:12 a.m.
9 on Halloween Day of 2005 when the plan was set
10 into motion to take this young woman's life. The
11 plan was set into motion to rape, and to kill,
12 and to mutilate this 25-year-old innocent, young
13 woman.

14 The investigation of this case begins
15 when we learn that Ms. Halbach was reported
16 missing on Thursday, the 3rd of November, 2005.
17 She was a photographer. One of her contracts,
18 one of the reasons, uh, that she was a
19 photographer was she worked for a magazine. She
20 worked for something called *AutoTrader Magazine*,
21 which was a magazine that sells cars. It -- it,
22 uh, put ads in the cars, and it requires
23 photographers to go around and take pictures, uh,
24 of those cars.

25 Uh, and so learning about Ms. Halbach,

1 or learning how she worked for *AutoTrader*
2 *Magazine*, is important for you to understand
3 about the investigation, because you will learn
4 that the investigation, or at least the missing
5 persons investigation, determined that the last
6 place that Ms. Halbach was on the 31st was a
7 place called the Avery Salvage Yard.

8 Uh, this is a place located here in
9 Manitowoc in a place called the town of Gibson.
10 It's rural Manitowoc. It's kind of the northern
11 edge, uh, of Manitowoc, uh, but it's a -- a
12 junkyard, a -- a salvage business that has junked
13 cars. Uh, and the, uh, other determination early
14 on in this case was that a man by the name of
15 Steven Avery made an appointment at 8:12 that
16 morning to have Ms. Halbach come to that
17 residence, or to come to that property, which was
18 the Avery salvage property.

19 I've alluded a little bit earlier about
20 the case against Steven Avery, and you first need
21 to know about the case against Steven Avery, the
22 investigation, uh, that pointed towards Steven
23 Avery being involved in this case.

24 You may already know, and many of your
25 jury questionnaires told us that you knew, at

1 least some things about this man, about Steven
2 Avery, that he had achieved some degree of
3 notoriety in 2003 when he was exonerated, when he
4 was released from prison for a 1985 sexual
5 assault.

6 You may know that Mr. Avery, or you'll
7 hear in this case, that Mr. Avery was exonerated
8 or set free because of something called DNA
9 evidence. Because there was some DNA evidence
10 from the '85 case that didn't match, uh, in that
11 case, and that an analyst from the State Crime
12 Lab, one particular analyst, found DNA on one
13 piece of evidence, on a hair that was collected
14 from the 1985 case, that didn't match. That
15 didn't match Steven Avery. And so Mr. Avery was
16 released. He was released from prison.

17 Ironically, you will hear, that that,
18 um, analyst from the Crime Lab, the DNA, um,
19 specialist who exonerated Steven Avery, was a
20 woman named Sherry Culhane. You're going to hear
21 her name later on in this case, because Ms.
22 Culhane, as evidence is developed in this case,
23 happens to be the very same analyst that does the
24 DNA, um, workup. That does all of the testing of
25 the DNA case.

1 All right. I'm going to -- Because the
2 side screens are not quite as large, the bottom's
3 cut off or the top is cut off, you're going to
4 have to look behind me at least until we take our
5 break when we fix, uh, these side screens.

6 But this is the very first time, and the
7 very first important photo that I want you all to
8 look at. This is the Avery salvage property.
9 The Avery Salvage Yard. It consists of about 40
10 acres of junked cars. It consists of four
11 different residences. Four trailers on this
12 peep -- piece of property.

13 The Steven Avery trailer, which is
14 located in the bottom left-hand corner of the
15 screen, or which would be the northwest corner of
16 the property. Right next to Mr. Avery's trailer
17 is his sister's, uh, property. Her name at that
18 time was Barb Janda. Also living with Barb at
19 the time were her sons, four sons, all with the
20 name of Dassey. Uh, they included, uh, the
21 defendant, Brendan Dassey, uh, his brothers, uh,
22 Blaine and Bobby and Bryan. They all lived on
23 that property as well.

24 Another trailer that's located on this
25 property was the Allen and Delores Avery trailer.

1 These were the grandparents of Brendan, or the
2 mom and dad, if you will, of, uh, Steven and, uh,
3 his sister, Barb.

4 And also on the property was the -- his
5 brother, Chuck's, trailer. So there's four
6 residences. You can see of the buildings that
7 are on this massive, um, um, property for them
8 are businesses. You'll also notice on these, um,
9 aerial photographs that there's lots of
10 buildings. There's outbuilding, there's business
11 buildings, there's, uh, a lot of sheds and those
12 kind of things that, uh, you need to be familiar
13 with as you hear about some of the searches and
14 where some of the evidence, uh, is -- is found.
15 All right?

16 Well, the investigation takes a dramatic
17 turn on the morning of, uh, Saturday, November 5,
18 when, uh, two citizen searchers, uh, uh, Nikole
19 and Pam Sturm, uh, when given permission to
20 search the Avery salvage property, these 40
21 acres, uh, happened to find the picture that
22 you've seen here. They happened to find Teresa
23 Halbach's SUV.

24 Uh, you'll notice, uh, Teresa Halbach's
25 SUV is covered. It is concealed. Uh, there'll

1 be testimony that it was intentionally concealed,
2 uh, with branches of debris and this very large,
3 um, hood for a vehicle. A -- a -- a large, uh,
4 either car or truck hood is -- is leaned up
5 against it.

6 Suffice it to say, though, that at 10:30
7 in the morning on the 5th of November, this case
8 takes a very dramatic turn. You'll hear that the
9 VIN number, that is the Vehicle Identification
10 Number, when they're looking for Teresa, when the
11 citizens are searching for Teresa, actually
12 matches, uh, and so they know at that time that
13 the, uh, vehicle is, in fact, the vehicle in
14 question.

15 Importantly, you'll hear evidence about
16 where the vehicle was found. Ms. Halbach's
17 vehicle was found in the opposite corner of both
18 the Avery and Dassey, uh, trailer. Uh, and,
19 again, it's behind kind of a pond, but it's
20 immediately adjacent to or close to a car
21 crusher.

22 Uh, that, uh, car crusher is equipment,
23 you will hear in this case, evidence will show,
24 uh, is the kind of equipment designed to crush
25 cars. It kind of makes sense. It's -- it's

1 called a -- a car crusher. But to make vehicles,
2 um, very, very small, almost unidentifiable, and
3 easily removed, uh, from the property. And
4 you'll see why, and you'll hear why, uh, Teresa
5 Halbach's vehicle is placed, uh, in that
6 location. That is, that proximity to the car
7 crusher.

8 You'll also hear later on that night,
9 after search warrants are obtained -- You'll hear
10 what search warrants are. Search warrants are
11 judicial authorization. Uh, that is, a judge
12 tells law enforcement that you can go ahead and
13 search a property for, um, evidence of a crime.

14 Uh, and after those search warrants were
15 obtained, you're going to hear that first evening
16 that, uh, some K-9 units, what are called cadaver
17 dogs, at least insentence -- insensitively called
18 cadaver dogs, uh, dogs that are trained to find
19 and detect human remains, um, they, in fact, uh,
20 hit on, uh, the, um, vehicle of, uh, uh, Teresa
21 Halbach, uh, alerting, indicating that there was
22 either a deceased individual in the back of that
23 car, or that there's human blood, uh, in the back
24 of the car.

25 You're going to hear evidence that this

1 vehicle was loaded onto an enclosed trailer. It
2 wasn't processed there at the scene. It was
3 actually driven to Madison, to the Madison Crime
4 Lab, for processing at that time. All right?

5 Now, let me just tell you, again, this
6 is a lot of information. This is, uh, days and
7 days and days worth of, uh, testimony that,
8 again, we're going to try to, uh, kind of fit
9 into a short period of time because, uh, it's
10 important to get to the crux of this case, uh,
11 what we'll be able to show a little bit later.

12 But on Saturday, residences and places
13 are starting to be searched. All right? The
14 first place, or at least one of the first places
15 to be searched, is the trailer of, uh, Steven
16 Avery.

17 You'll hear from Agent Fassbender, and
18 others that are involved in this search effort,
19 that they want to find Teresa. Their first
20 efforts -- And early on in this case, uh, even
21 though they found her vehicle, Teresa hasn't been
22 found yet. And so they're desperately looking
23 for Teresa Halbach, hopefully, alive. They're
24 hoping to find her on this property alive.

25 And so you're going to hear of the law

1 enforcement effort to search all of these
2 residences, again, which include the trailer,
3 which include the garage of Steven Avery, and
4 other residences, including Brendan Dassey's, uh,
5 home, uh, business, uh, properties, uh, on the
6 property, uh, and also other, um, vehicles. In
7 fact, all of the junked cars. Uh, you'll see
8 photos of 4,000 junked cars.

9 I hope at the end of this case you'll be
10 able to appreciate just how many cars that is to
11 search, each and every one of those cars, on at
12 least two or three different occasions, by not
13 only law enforcement, but volunteer firefighters
14 and other, uh, citizen searchers. All right?

15 Um, also, on, uh, the next day, that is
16 on the 6th, that Sunday, the 6th of November,
17 you're going to hear that every one of those
18 junked cars is opened, is searched. Again,
19 they're looking for Teresa Halbach's body.

20 You're going to hear that a rifle, one
21 of the two rifles that was in Steven Avery's
22 residence was seized that Sunday. Uh, this rifle
23 is a .22 caliber Marlin Glenfield semi-automatic,
24 uh, rifle. You'll hear about the significance of
25 this rifle, but you'll hear that it was actually

1 hanging on the wall -- at least when officers
2 found it -- hanging on a gun rack right on the
3 wall in the bedroom of Steven Avery.

4 You're going to hear about, uh, a phone
5 message, uh, that was, uh, recovered. Uh, this
6 phone message was recovered from Brendan
7 Dassey's, uh, home. Uh, you're going to hear in
8 this case -- and I know that I've advanced a
9 little bit quickly for you, but when Steven Avery
10 made the appointment to lure Teresa Halbach to
11 the property, evidence will show that he used the
12 name, B. Janda. His sister's name is Barb Janda.

13 So using his sister's name, using his
14 sister's phone number, or the call back number,
15 uh, you're going to hear, uh, this -- or expect
16 you'll hear this, uh, tape, this, um, uh, voice
17 recording of Teresa, indicating that she got the
18 message, uh, that, uh, the time that, uh, she
19 would be able to come and take photographs of a
20 van that was for sale was sometime after 2:00,
21 uh, on that day. But, again, it was recovered
22 and you'll be able too hear, um, that evidence.

23 On Monday, uh, the 7th, the Crime Lab --
24 uh, and, again, it's a little bit better if you
25 look at -- at this -- um, they make a startling

1 discovery. Remember the SUV of Teresa was taken
2 to the, um -- the Crime Lab for processing? They
3 found male blood in six different locations in
4 the SUV and they found a great deal of female
5 blood in the back, or what's called the cargo
6 area, of Teresa's, uh, SUV. These were the first
7 results, uh, they had gotten. They didn't get
8 any D re -- DNA results back yet, but they could
9 tell it was male blood, and they could tell that
10 it was both, uh, female blood.

11 You'll hear from investigators, from
12 Mr. Fassbender, and even from some of the Crime
13 Lab people, that when you find male blood and you
14 find that amount of female blood, uh, in the back
15 or in the cargo area of an SUV, it became very
16 obvious on Monday, the 7th, just a couple of days
17 into this investigation, that something terrible
18 had happened. That a crime had happened.
19 Criminal behavior, uh, was afoot, and that, uh,
20 the search then began for what person or persons
21 were involved in committing these crimes.

22 Also, on Monday, you're going to hear
23 about a burn barrel that was recovered from just
24 outside of Steven Avery's, uh, residence. Uh,
25 the Steven Avery and the Brendan Dassey, uh,

1 residences, again, are next to each other, kind
2 of between them, closer to Mr. Avery's house, is
3 an Avery, um, burn barrel.

4 Uh, this is another photograph to kind
5 of give you a -- an idea of how close not only
6 the burn barrel is to the Steven Avery trailer,
7 but also, and more importantly, how close this
8 burn barrel is to the van. This is the maroon
9 van that Teresa Halbach, the evidence will show,
10 was asked to come and take pictures of on
11 Halloween Day on 2005, and so you'll hear about,
12 uh -- about all of those things.

13 The next day, Tuesday, uh, the 8th,
14 you're going to hear that a thorough search was,
15 um, performed of Steven Avery's trailer. Uh, and
16 found in Steven Avery's bedroom was a key. This
17 was a Toyota key. You will hear evidence that
18 later this Toyota key matches the key of Teresa
19 Halbach's SUV. It starts the ignition. It
20 turns, uh, um, the ignition.

21 The second important finding on the 8th
22 was Teresa's license plates. These are found in
23 a junked vehicle, uh, kind of on the path on the
24 way to Steven Avery and Brendan Dassey's, uh,
25 residence.

1 And the third, and most chilling,
2 discovery, uh, on the 8th, the evidence will
3 show, is, uh, this burn area.

4 Now, to give you an idea or an overview,
5 again, of this corner, this quadrant, of the
6 Avery property, again, the, uh, Dassey and Janda
7 trailer, Steven Avery trailer, the van that was
8 for sale, you'll be able to see that, uh, this
9 burn area, uh, was found just a -- a few feet
10 behind the garage of Steven Avery.

11 You're going to hear evidence that
12 within this burn area, um, obvious human bone
13 fragments were found. You're going to hear that
14 the Crime Lab came to process this scene, that
15 arson investigators came to process the scene.
16 They recovered, uh, at least on that first day,
17 that is, Tuesday, the 8th, as many of the bones
18 that they could recover from this obvious, um,
19 uh, destructive, uh, area, this burn area, and
20 the evidence will, uh, show that, um, uh -- how
21 the bones were, uh -- were recovered and
22 transported for identification and examination.

23 You're going to hear that officers --
24 Remember, this is Tuesday. They had gotten there
25 Saturday already. That officers weren't able to,

1 um, recover or to even examine this area. Uh,
2 either police officers, themselves, humans, or
3 with the assistance of K-9s, cadaver dogs, or
4 bloodhounds, or any kind of search dogs, were not
5 able to, uh, inspect this particular area, um,
6 because of a German Shepherd that was, uh,
7 vicious and that was guarding that particular,
8 uh, area. That particular burn area.

9 This is a photo that just assists you
10 and explains why it took until Tuesday to find
11 these, um, human remains in that area. All
12 right?

13 We'll move a little bit more quickly
14 into the following -- or into the balance of that
15 week. Uh, the recovery of those bones, you will
16 hear, were in very, very, uh, small, um, size.
17 They were also very, um, degraded. They were
18 charred. Um, but they were all examined, um, by
19 a forensic anthropologist. We'll talk about that
20 a little bit, uh, later in the case. But what
21 you need to know on Wednesday is that they were
22 able to say that they're human bones and that
23 they're from an adult female.

24 Uh, officers, obviously, at this point
25 believe that this is the site of the mutilation

1 and the disposal of Teresa Halbach.

2 Later, on the next day, on Thursday, uh,
3 this burn area -- this is a little
4 computer-generated image of the burn area, uh,
5 officers, um, are able to further excavate and,
6 um, recover all the rest of the bones that, uh,
7 are found in that area.

8 And let me just take a -- a moment, uh,
9 to tell you about these computer-generated
10 images, uh, that you're going to see. There's a
11 gentleman by the name of Tim Austin. He is a,
12 um, employee with the Wisconsin State Patrol.
13 Uh, Tim Austin was at the scene for, uh, at least
14 seven of the days, uh, that led up to or included
15 the processing of the scene, and Mr. Austin --
16 you're going to hear evidence he took at least
17 4,100 measurements and later created, uh, not
18 only still images, uh, of the exterior of the
19 property, exterior of Mr. Avery's, uh, garage,
20 and trailer, and the burn area, and, uh, the
21 Janda and Dassey areas, um, but also some of the
22 interiors.

23 Because you're not going to be able to
24 go out there, because you're not going to be able
25 to do a -- a scene visit, um, Mr. Austin created

1 for you, uh, kind of a tour. Um, many of you
2 might be familiar with at least with some kind of
3 computers, virtual tours, that you're able to
4 kind of tour the area and -- and get kind of a --
5 a -- a lay of the land, if you will, and you'll
6 hear how accurate, uh, the depictions are.
7 You're going to see it. You're going to see the
8 virtual tour so that you get a better flavor or
9 feel for where one item might be in relation to
10 another. All right? So, uh, we also have for
11 you these computer-generated images, um, that
12 you'll see.

13 Now, you heard about Sherry Culhane.
14 You heard about her doing some DNA work in this
15 case. Now, you're going to hear that Ms. Culhane
16 received from law enforcement 180 items -- 180
17 items of evidence, uh, where officers asked that
18 a DNA profile be developed. Uh, you're going to
19 hear that that is the largest submission of
20 evidence, ever, at the Wisconsin State Crime Lab,
21 uh, and that the amount of DNA work in this case,
22 uh, was absolutely overwhelming.

23 Ms. Culhane, and although not as
24 important, uh, in, uh, this case, uh, will still
25 tell you about all of the profiles that she was

1 able to develop. She'll tell you what DNA is,
2 and it's a genetic fingerprint, and how you can
3 make matches and all those kind of things. All
4 right?

5 With that having been said, though,
6 you're going to hear that one of the bones that
7 was recovered, one of the bones that was
8 recovered in the pit, still had some tissue on
9 it. So it had some muscle tissue on the bone.
10 It wasn't completely burned. It wasn't
11 completely degraded. This allowed Ms. Culhane,
12 uh, to develop a DNA profile, uh, and, in fact,
13 positively match this leg bone, uh, to the
14 sample, to the exemplar, to the standard of
15 Teresa Halbach.

16 So after that, um, bone is examined, and
17 after a DNA profile is established, there isn't
18 any more question as to who this female skeleton
19 is, this mutilated, um, fragmentary skeleton
20 belongs to, and that is, with 100 percent
21 certainty, Teresa Halbach.

22 So the investigative timeline, that is,
23 the first, um, eight or ten days of this case,
24 um, includes -- These aren't going to help you
25 because we have stuff on the bottom. So you're

1 going to have to look forward. Again, I
2 apologize for that. That will be fixed at, uh --
3 at the break.

4 But on the 31st of October, um, Teresa
5 Halbach is killed. You're going to hear about
6 the timeline of October 31. You're going to hear
7 that at 8:12 in the morning on the 31st, Steven
8 Avery lures or calls, um, *AutoTrader Magazine*,
9 and Teresa Halbach is asked to come out to the
10 scene. You're also going to hear she'd been
11 there five times before, um, but always with the
12 name of, uh, Steven Avery. Uh, at least I think
13 that's what the evidence is going to show. But
14 Mr. Avery used a different name, uh, that is, B.
15 Janda, to get her to come out on that afternoon.

16 You're going to hear at 11:43 that
17 morning, so sometime just before noon, Teresa
18 Halbach makes that call, that's recorded, to
19 Brendan Dassey and Barb Janda's answering machine
20 saying, I can come out. Uh, I'll be out there
21 sometime after 2:00, uh, today.

22 You're going to hear about the two stops
23 she made before Steven Avery's and Brendan
24 Dassey's residence. That is, at the Steven
25 Schmitz residence about 1:30, and sometime

1 between 2 and 2:30 at a woman by the name of
2 JoEllen Zipperer's. Uh, the similar kind of
3 stops. She stops, she takes pictures of the
4 cars, she gives them an *AutoTrader Magazine*, a
5 bill of sale, she completes the transaction
6 before taking the photo for *AutoTrader*, and then
7 she goes on to her next stop that day.

8 Well, her next stop that day, uh, was
9 that of, um -- at the Steven Avery salvage
10 property. You're going to hear at 2:27 p.m. a
11 woman from *AutoTrader*, Dawn Pliszka, talks to,
12 uh, Teresa Halbach. You're going to hear that
13 during that conversation, um, Ms. Halbach says,
14 I'm on my way. I'm on my way to the Steven Avery
15 property. So when we talk about a timeline, when
16 was she there? About when does she get there?

17 You're going to hear that the Zipperer
18 residence is less than ten minutes from the Avery
19 property. And if at 2:27 she says, I'm on my
20 way, it can be no longer or later than 3:27 or
21 about 3:40. Excuse me, 2:27 or about 2:40 in the
22 afternoon, 20 to 3, that Teresa Halbach gets to
23 Steven Avery's property where the photos are
24 taken.

25 You will hear evidence that she

1 completes the transaction. She takes the photos
2 of the van just like she's been asked to do. Uh,
3 you will then hear, uh, in, unfortunately,
4 graphic detail, what happens at Teresa Halbach
5 after 2:40 in the afternoon.

6 Let's go back to the investigation for
7 just a minute, though. Teresa doesn't show up
8 for work on the 1st or 2nd of, um, November. On
9 the 3rd, the Halbach family and friends become
10 understandably concerned, and they begin to
11 retrace Teresa's steps. Where is Teresa? How
12 can we find her?

13 On the 4th, both the citizen efforts and
14 the law enforcement efforts to find Teresa are
15 kind of ramped up. Um, they do aerial searches,
16 uh, they look at financial transactions, they
17 check out her cell phone records, and which
18 towers that her cell phone kind of ping off of,
19 or bounce off of, and also you'll hear about the
20 distribution of missing person posters at that
21 time by citizens.

22 You'll hear that on the morning of the
23 5th her vehicle is found at 10:30 in the morning
24 by the Sturms. At about 2:00, investigators, uh,
25 become actively involved in searching, or at

1 least in obtaining search warrants, and then, uh,
2 searching the property, and you'll then hear
3 about the searches continuing.

4 Uh, very quickly, on Sunday, the, um,
5 firearms and garage is searched, and you'll hear
6 about the evidence, uh, that is obtained.

7 On the 7th, it becomes more full scale.
8 Lots and lots, in fact, hundreds of law
9 enforcement officers and volunteers and citizens
10 become involved in the search of this massive
11 40-acre property. Uh, at that time all the
12 junked vehicles, uh, are searched, and you'll
13 hear about the discovery of the burn barrel.

14 On the 8th, those three critical
15 discoveries that we talked about, uh, that is,
16 the Toyota key being found in Steven Avery's
17 bedroom, uh, SUV plates are found at that time,
18 and the burn area is discovered, which -- excuse
19 me -- contains, uh, those human remains.

20 The 9th becomes an important day.
21 Steven Avery's arrested. Steven Avery's arrested
22 for a weapons charge. On the 9th, he's
23 interviewed. But what you'll also hear about the
24 Steven Avery contact on the 9th, uh, is that
25 officers take some photographs. They do a, uh,

1 physical examination of Steven Avery, and they
2 find a cut that you'll see in just a few minutes.

3 On the 10th, the burn area is further,
4 um, examined. On the key, itself, on the key
5 that was found in Steven's bedroom, they find his
6 DNA. We'll talk about that a -- a -- a little
7 bit, uh -- a little bit further.

8 On the 11th, um, the victim's blood,
9 that is the female blood, from within the SUV --
10 Remember the big pool? Or the big, uh, stains in
11 the cargo area in Teresa's, uh, SUV? Uh, those
12 now match, uh, a soda can that Teresa had up in
13 the front of the vehicle. It's then presumed,
14 uh, to be that of Teresa Halbach's.

15 So those are the first, uh, eight days
16 or so of the investigation and what you need to
17 know. Again, that's probably, you know,
18 two-and-a-half or three weeks, or could be, of
19 testimony that, in this case, we're going to try
20 to fit into a layer of evidence, try to fit into
21 about two days, maybe two-and-a-half days. So
22 it's going to go quickly, but it's meant to give
23 you a flavor of the size of this case, the scope
24 of this case, uh, and also, to the credit not
25 only of the Halbach family and to the memory of

1 Teresa, but you need to hear it. You need to
2 hear the whole story, uh, of the investigation.

3 We talked about those DNA matches that,
4 uh, Ms. Culhane developed at the, uh, Crime Lab.
5 You're going to hear that Teresa's, um, blood,
6 uh, is, in fact, later positively identified,
7 positively matched, to a standard in the cargo
8 and -- and panel, uh, area.

9 The back cargo door. You're going to
10 hear about, uh, blood having been actually flung,
11 uh, onto that door. You're going to hear from a
12 person by the name of Nick Stahlke, a blood
13 spatter expert, as to how those kind of blood
14 spatters, uh, can be left in a very violent, uh,
15 kinds of -- uh, of episodes.

16 You're going to hear her blood was found
17 on the rear tailgate, uh, the door handle, and,
18 again, on the -- on the soda can.

19 Uh, Steven Avery's blood, uh, is found,
20 like I told you, in six different places in the
21 vehicle. Positive matches, uh, for Steven Avery,
22 on the, uh, rear passenger door, near the
23 ignition area, um, where Steven Avery's actively
24 bleeding finger actually leaves some DNA, uh, in
25 the ignition area. Also, in the front, that is

1 the front passenger part, of the SUV, that is on
2 the, uh, CD case and, uh, on both of the front
3 seats.

4 I told you before about the cut, the
5 actively bleeding cut, on Steven Avery, uh, on
6 the 9th. We will show you pictures, uh, of the
7 remnants of that cut. It was healing, uh, but
8 just how deep that cut was. And you can draw the
9 conclusions, and, in fact, uh, it may or may not
10 even be contested that his finger was actively
11 bleeding on the 31st when he struggled with
12 Teresa, uh, and when he, uh, loaded her in the
13 back of, uh, uh, the vehicle, uh, and helped and
14 dispose of the vehicle to, uh, conceal that
15 particular crime.

16 And, finally, you're going to hear
17 evidence of the DNA of Steven Avery being found
18 on Teresa Halbach's key. You're going to hear
19 about how DNA is the same whether it's in your
20 blood, whether it's in other bodily fluids, um,
21 perspiration, skin cells, semen, uh, other kinds
22 of places. It's the same genetic code. It's the
23 same DNA that's found. And when Steven was
24 handling, uh, that, uh, key, uh, he left his
25 perspiration, he left his sweat on that key, and

1 Ms. Culhane, excuse me, was able to develop a
2 full profile. All right?

3 Everybody take a deep breath, because
4 we're now going to start talking about the reason
5 that you're here. That was all of Steven Avery's
6 case where the evidence that pointed -- excuse
7 me -- to Steven Avery.

8 Uh, this is going to be a time when the
9 Judge is going to allow you to take a few minute
10 break, your morning break. Excuse me. After you
11 return, we will then tell you about what evidence
12 it is that the State intends to show, uh, and why
13 it is, uh, that the State intends to prove beyond
14 a reasonable doubt that that man, uh, that
15 Brendan Dassey -- excuse me -- committed the
16 crimes of first degree intentional homicide,
17 mutilation, and sexual assault.

18 So if we may, Judge, a -- a 10- or
19 15-minute --

20 THE COURT: Certainly.

21 ATTORNEY KRATZ: -- break at this time,
22 and when you come back, uh, I will conclude my
23 opening statement. Thank you, very much.

24 THE COURT: We'll recess for 15 minutes.

25 (Recess had at 10:13 a.m.)

1 (Reconvened at 10:32 a.m.)

2 ATTORNEY KRATZ: The screens have been
3 fixed. The reason we're here is for Brendan
4 Dassey. For the jury to consider Brendan
5 Dassey's behavior. Uh, that is whether he
6 participated in criminal behavior.

7 The Judge instructed you that you're
8 going to be able to take notes during the
9 testimony in this case, during the presentation
10 of -- of the evidence. Um, and as you take
11 notes, um, it oftentimes is a suggestion from the
12 lawyers, Mr., um, Fremgen or -- or Edelstein,
13 whoever is giving their opening statement, may
14 have suggestions, uh, for you as well.

15 But in note taking, in taking detailed
16 notes, which you're going to be able to use
17 during your deliberations, the two questions at
18 least that the State is going to ask, or present
19 evidence, that's going to ask you to answer are
20 these: Number one, was he there? And, number
21 two, did he help? Was he there? And did he
22 help?

23 On November 6, Brendan Dassey, right
24 after this case began, right after the
25 investigation began in this case, denied any

1 knowledge of Teresa Halbach's death. Uh,
2 indicated some version that he had seen his Uncle
3 Steve talking with, uh, Teresa, but the
4 investigators pretty much discarded that, because
5 it wasn't consistent, it didn't fit with the
6 timeline. Didn't fit with the evidence.

7 Remember, Teresa got there about 2:40.
8 You're going to hear evidence that Brendan didn't
9 get off the bus from school until 3:45, a full
10 hour after that meeting, after Teresa would have
11 been talking out on a porch with, uh, Mr. Avery.
12 And so Brendan was nowhere on the radar screen.
13 He was nowhere, uh, a suspect. He was a -- a
14 witness, like any other witness, who might have
15 been on the property.

16 That tends to change on February 27 when
17 Brendan starts giving new details. He's
18 reinterviewed, uh, based upon some, uh, other
19 information that was obtained by Mr. Fassbender
20 and Mr. Wiegert, and he then becomes a much more
21 important witness. He's a witness at this point.

22 He says he sees Steve standing near the
23 fire. He sees body parts of Teresa Halbach in
24 the fire. He helps put fuel on the fire to help
25 kind of stoke up the fire, if you will. And

1 Uncle Steve makes some admissions that, uh, Uncle
2 Steve stabbed Teresa Halbach, but that also that
3 Mr. Dassey saw some clothing. And,
4 interestingly, he said he saw Teresa's clothing
5 in a bag and he saw them in a bag in the garage.

6 Well, as officers, you will learn, kind
7 of reconstructed that February 27 statement.
8 They started saying, as investigators do, well,
9 wait a second, that can't happen that way. How
10 can he describe Teresa Halbach's clothing if
11 they're in a bag?

12 Forensic interviews, you will hear --
13 you'll hear testimony from, uh, Investigator Mark
14 Wiegert -- uh, are designed for witnesses.
15 Witnesses give interviews, and forensic
16 interviewing, uh, you will hear, um, some version
17 of what's called the funnel technique. And I'm
18 not going to bore you right now, because I'll let
19 Mr. Wiegert bore you, uh, later with, uh -- with
20 what the funnel technique is.

21 The theory, though, is that witnesses
22 when you're trying to get details, the evidence
23 will show, is that you start with a free
24 narrative. A narrative. Tell me everything you
25 know about what happened in the case. And then

1 it becomes more and more directed. Uh, you can
2 ask direct questions, or more focused questions,
3 or even, in the rare case, you can ask leading
4 questions, to try to draw out of witnesses what
5 they know about the case. That makes sense. It
6 makes sense that you want them to tell you
7 everything, but you're going to have to follow up
8 with, um -- with questions.

9 You're also going to hear, though, that
10 there's a difference between interviews and
11 interrogations. Interrogations are designed for
12 suspects. They're not designed for witnesses.
13 And you're going to hear in this case -- in fact,
14 you're going to hear a lot in this case -- about
15 interrogations, about the interrogative process,
16 about the process of asking questions, and the
17 process of obtaining truthful information from
18 suspects.

19 You're going to hear that confessing to
20 a crime, and, in fact, the most serious crime is
21 murder, but confessing to any crime is an
22 unnatural act. It goes against a human's, um,
23 feeling of self-preservation. Okay? That should
24 make sense to -- to everybody, and the evidence
25 is going to show that. That it is difficult to

1 have somebody admit to a very, very serious, um,
2 crime.

3 And so there are techniques that are
4 developed to encourage suspects. Again, these
5 are interrogations, these aren't interviews. But
6 to encourage suspects to provide truthful
7 information. You're going to hear about those
8 techniques, that those techniques include some
9 kind of an accusation that the person's not
10 telling the truth. And in every confession,
11 every admission that Mr. Wiegert, and perhaps
12 other witnesses, will tell you about, they always
13 start with a denial. I wasn't involved in the
14 case.

15 You will then hear how confessions or
16 admissions move from denials to admissions. It's
17 called shifting from denials to admissions.
18 You're going to hear about the stages where an
19 individual will become in a very passive mode,
20 will allow the investigator to do most of the
21 talking. In fact, you'll hear about body
22 language, and looking down, and -- and, uh,
23 really kind of, uh, allowing the investigator to
24 give their version about what happened.

25 And you will see a point -- They'll

1 describe a point -- that is, investigators will
2 describe a point -- in every interrogation where
3 this happens, but in Mr. Dassey's case, you will
4 see a point where that first admission occurs.
5 The first acceptance of some responsibility for
6 being involved in the case. All right? Then the
7 rest of the interrogation is drawing out as many
8 details as you possibly can.

9 Now, I told you that, um, moving from
10 denials to admissions are unnatural. It's a
11 difficult kind of thing to do, and there's two
12 techniques in this case, and you'll see evidence
13 in this case, um, that you'll hear a lot.

14 The first technique, uh, is something
15 called expressing superior knowledge.
16 Investigators oftentimes -- and if you think
17 about it they have to -- they oftentimes express
18 that they know more than they do. Uh, that they
19 have more information than they really have.

20 You're going to hear evidence, you're
21 going to hear testimony, when officers say things
22 like, it's all right, we already know what
23 happened, or words to that effect, in this case,
24 you're going to hear that over and over and over
25 again, it's all right, we already know what

1 happened, understand that the officers will
2 explain that that is a technique. It is a
3 technique to encourage that unnatural act. To
4 encourage the act of going from a denial, uh, to,
5 uh, an admission.

6 You'll also hear testimony about how
7 guilty people, that is, people who really do
8 commit crimes, how they hear that very phrase,
9 it's all right, we already know what happened,
10 how they hear that differently than somebody
11 who's innocent, or somebody who may not have
12 committed a crime. All right?

13 So you can kind of figure it out
14 yourselves. I mean, jurors, you'll be able to
15 figure this out, and the evidence will help you
16 with that, but guilty people, when they hear we
17 already know what happened, will tend to make
18 admissions. Innocent people, who weren't
19 involved at all, who hear we already know what
20 happened, will think, good, then you're going to
21 know I wasn't involved, and so how it plays on,
22 and you'll need to kind of understand that
23 difference in the dynamic.

24 The last, um, concept that you'll hear
25 about, that I want to talk about in opening

1 statement, is giving a suspect a reason to admit.
2 We talked about that before. Uh, is a suggestion
3 that they will feel better. That they will have
4 some moral acceptance. All right? Some real or
5 perceived better feelings about themselves if
6 they get it off their chest. So whether you'll
7 sleep better, or you'll feel better, or you'll
8 get it off your chest, or words to that effect,
9 when you hear that in this case, know, and you'll
10 hear evidence about, that this is a technique --
11 an interrogation technique -- and you'll hear a
12 lot about that.

13 Well, there's safeguards, too, that
14 you're going to hear about. We don't just, uh,
15 base your case on admissions or confessions of
16 people, but you have to try to verify what it is
17 that somebody says. And this screen explains
18 some of those things that the testimony will show
19 in this case.

20 Can that person's statement be verified,
21 or what's called "corroborated", through physical
22 evidence or other known facts? Right? That
23 makes sense.

24 Number two, were the details not yet
25 known to the public, and, more importantly, I'm

1 going to throw in here, were they not yet even
2 known to the law enforcement officers who were
3 asking the question?

4 And, number three, the ability of the
5 suspect to resist false suggestions. Not to
6 resist suggestions, but to resist false
7 suggestions.

8 We'll talk about that when we talk about
9 these March 1 statements.

10 Now, you're going to hear in this case
11 that there was nothing unique about the March 1
12 interrogation of Brendan Dassey other than it
13 started off as a witness' statement. Remember,
14 on March 1 Brendan Dassey was still a witness.
15 He was not a suspect at all. He wasn't on, uh,
16 the radar screen. All Brendan did at that point,
17 or all the police knew at that point, is that he
18 may have seen some things in a fire of his Uncle
19 Steve, Steven, um, uh, Avery. And you're going
20 to see that entire March 1 statement given by
21 Brendan Dassey.

22 Now, some of it is going to be difficult
23 to watch for a couple of reasons.

24 Number, one, some of it's really boring,
25 um, but we're going to show you start to finish

1 the entire admission. I think it's about four
2 hours long. So as you think later in this week,
3 um, just prepare yourselves, you're going to have
4 four hours of sitting and watching, um, a lot of
5 times, not very interesting, um -- interesting
6 questions.

7 But let me also warn you, because it's
8 fair for me to do this, that some of the details
9 may be disturbing. Uh, they are statements made
10 by a young man who involved himself in some very,
11 very serious behavior, some very serious choices.
12 And you're going to hear how he made those
13 choices, and the kinds of things that he and his
14 uncle did to this 25-year-old girl. All right?

15 Now, we have to give you those details.
16 We have to play the entire, um, statement for
17 you. You're the jury in this case. You have to
18 determine whether or not this makes sense, the
19 degree of detail that Brendan gives, the words
20 that Brendan uses, whether or not they ought to
21 be believed. That's your job. Your job at the
22 end of this case will decide whether that
23 statement ought to be believed.

24 I'm going to briefly go through what
25 Brendan Dassey says on March 1, the version --

1 Brendan's version of what happened to Teresa
2 Halbach.

3 Brendan Dassey, in, again, sometimes
4 graphic detail, will talk about approaching Uncle
5 Steve's trailer, and before he even knocks on the
6 door, he hears screaming. He hears screaming
7 from inside of the trailer, and he knocks on the
8 door.

9 Now, remember what I told you before
10 about, um, Brendan's statements and should they
11 be believed, and the things that, uh, was he
12 there, uh, and did he help?

13 Uh, remember, also -- And at the end of
14 my opening, we're going to talk about some
15 choices and the evidence of some choices that
16 Brendan makes. But the choice to knock on the
17 door, even though you hear screaming from a young
18 woman inside, uh, is the first choice that
19 Brendan makes.

20 You're going to hear that Steven Avery
21 answers the door. You're going to hear that he's
22 sweaty, and that he tells Brendan Dassey that he
23 has raped this woman that he has in the back of
24 his bedroom. These are difficult, hard images to
25 kind of wrap your mind around. But this is the

1 version that Brendan Dassey gave on the 31st of
2 October.

3 Brendan actually sees Teresa tied up.
4 He sees her shackled with handcuffs and leg irons
5 to the back bed -- in the back bedroom. And,
6 here, when we talk about decisions, Mr. Avery,
7 himself, asks Brendan if he wants to have sex
8 with the woman that's been restrained in the
9 bedroom now.

10 Some of the language is very graphic,
11 um, he -- they don't use the word, do you want to
12 have sex. All right? They use some very, very
13 crude, degrading language towards any woman, but
14 certainly towards a young woman, uh, who is in
15 this trailer already.

16 When we talk about those decisions that
17 Brendan gets to make at this point, Brendan says,
18 yes, I want to do that.

19 You're going to hear that Brendan Dassey
20 rapes Teresa Halbach. You hear that he walks
21 into the bedroom while Teresa's restrained on the
22 bed, and by force, and by violence, and with the
23 use and threat of a weapon, he has sexual
24 intercourse with this woman without her consent.

25 You're going to hear a lot more details

1 that I'm not going to share with you at this time
2 about that particular moment, that particular,
3 um, event. I want you to listen to that young
4 man's description of what Teresa Halbach says to
5 him as he's doing that to her.

6 After the rape, Steven Avery praises his
7 nephew, and says, that's how you do it. These
8 are explanations, again, from Brendan. The
9 repulsive expression, lack of empathy, lack of
10 any kind of moral fiber, any kind of moral
11 compass at all, for an uncle to tell a nephew,
12 that's how you do it.

13 Then Steven and Brendan discuss if they
14 should, and how they should, kill Teresa Halbach.
15 Again, the decision tree. What does Brendan
16 decide to do? Steve says, will you help me?
17 Brendan says, yes. You'll hear testimony about
18 Steven and Brendan going into the bedroom.
19 Steven Avery stabs the victim. Brendan Dassey,
20 handed the knife by Uncle Steve, cuts Teresa
21 Halbach's throat.

22 You're going to hear that they take, um,
23 this 25-year-old woman, unclothed, to the garage.
24 They place her on the floor. Dassey waits with
25 Teresa Halbach, who is not yet dead, laying on

1 the floor, as Mr. Avery retrieves his .22 caliber
2 Marlin Glenfield semi-automatic rifle, and
3 Brendan says Uncle Steve shoots her ten times, at
4 least twice in the head, including on the left
5 side of her head.

6 The statement goes on that Avery and
7 Dassey load Ms. Halbach, who's now been killed,
8 thankfully, into the back of her -- cargo area of
9 her SUV, and they decide how to dispose of her
10 body.

11 Mr. Avery dis -- discusses and decides
12 that, uh, we should burn the body. Should
13 mutilate the body so that it can conceal the
14 crime. Mr. Dassey will tell investigators that
15 he helped. That he helped carry this unclothed
16 young woman to this large bonfire in the back of
17 Steven's garage and throws this young girl on the
18 fire.

19 You're going to hear that, um,
20 Mr. Dassey describes burning, mutilating the body
21 to conceal the murder, and taking this very large
22 car seat -- remember, you saw that in earlier
23 pictures -- and the two of them threw this car
24 seat onto the fire.

25 By the way, let me just stop here, and,

1 as you take notes, as you take notes during this
2 trial, please remember to jot down the kinds of
3 things that require two people. Please remember
4 to jot down where it's a two-man job rather than
5 a one-man job, to help you decide, was he there?

6 This is one of those places that
7 requires a two-man job. This large, um, car seat
8 that you'll see, this large metal frame, that's
9 thrown on top of this young woman whose body's
10 being mutilated.

11 You're going to hear Brendan tell the
12 officers that the vehicle was driven down to that
13 pit area that we, uh, talked about, that it was
14 concealed with branches and a car hood, and the
15 license plates were removed, and Steven Avery,
16 for some reason, went underneath the hood of, uh,
17 Teresa's vehicle.

18 Brendan Dassey will tell you that the
19 garage that, thereafter, when they walked back,
20 that the garage was cleaned with bleach, was
21 cleaned with gas, was cleaned with paint thinner,
22 that Mr. Avery took the Toyota key, put it into
23 his bedroom, that Teresa's clothes were thrown
24 onto the fire.

25 They're statements from Brendan.

1 Remember this. Brendan's telling you that her
2 clothes were thrown on the fire, that Avery's
3 finger was cut and actively bleeding at the time,
4 that Teresa's cell phone and camera were burned
5 in the burn barrel earlier that day, and that
6 Steven's girlfriend, Jodi, Jodi Stachowski, had
7 called Steven Avery's house at least twice while
8 Brendan was at the house.

9 Those are the statements of an
10 individual. The details of an individual who's
11 committed rape and murder and mutilation. It's
12 your decision, the jury's decision alone, whether
13 or not he was there and whether or not he helped.
14 And when you evaluate Brendan's testimony, you're
15 going to have to come up with, um, those
16 decisions. I can't tell you. There's no expert
17 witness, the Judge, uh, nobody can tell you, but
18 the jury, collectively, will decide whether to
19 believe Brendan or not.

20 Now, the police officers will provide
21 you with some help to corroborate, to explain the
22 confession, the evidence in this case. Uh,
23 you'll have to ask yourself whether the police
24 already know. Even though Mr. Wiegert keeps
25 saying, it's all right, Brendan, we already know,

1 you're going to find out they didn't already
2 know, uh, what -- and were very, very surprised
3 of, uh, what Brendan, uh, was telling them detail
4 after detail after detail.

5 What did they suspect? Um, and what
6 could the police verify? What later could they
7 find, by physical evidence, to support or to
8 corroborate what it was that Brendan was saying?

9 Later that same day, on March 1, you're
10 going to hear that the officers -- they got a
11 search warrant. They said, well, if Brendan says
12 that Teresa was shot in the garage, we better go
13 take a look in that garage. We better take a
14 better look than we took last time.

15 The evidence that will be presented to
16 you that will verify Brendan Dassey's statements,
17 the State believes, will be compelling, the State
18 will -- believes will corroborate or verify what
19 Brendan says. Again, we're not going to ask you
20 take Brendan's word for it, all of these things,
21 but all of these questions that I'm going to ask
22 you now, and this is the last portion of my
23 opening statement, uh, is meant to, um, explain
24 to you the physical evidence that answers all of
25 these questions.

1 When Brendan says that Teresa was in the
2 trailer on 31st, do we believe that or not?
3 Well, you're going to see evidence that, uh, an
4 *AutoTrader Magazine* and the bill of sale, the
5 completion of the transaction, the completion of
6 the photography, and her business with Steven are
7 found in the trailer. Found inside the trailer
8 verifying what Brendan said.

9 Was Teresa restrained that day as
10 Brendan says? You're going to hear that both
11 handcuffs and leg irons were found in Steven
12 Avery's bedroom during the search of his bedroom.

13 The most important question, perhaps, is
14 was she shot in the garage? And that's where the
15 March 1 search warrant becomes so critically
16 important. You're going to see the snow, and the
17 snow is kind of your cue that this is in March,
18 rather than, uh, the November, uh, before.

19 Uh, this is Steven Avery's garage where
20 they do a much more thorough search, uh, of, uh
21 -- of the garage.

22 There are two -- These are called
23 evidence tents, by the way, and No. 9 and No. 23,
24 which is back here, which I'll show you in just a
25 minute, are the important ones. Officers do, in

1 fact, find two bullets. Remember? He said that
2 she was shot in the garage.

3 The police, on March 1, as a result of
4 Steve -- of, uh, Brendan Dassey's statements,
5 after getting the search warrant, find two
6 bullets in the garage. One where Tent No. 9 was
7 shown, it's closer to the front of the garage,
8 and one behind a compressor, where Tent No. 23,
9 uh, is located. This is a better view for you of
10 where, uh, those two bullets are found in the
11 garage, but the most important finding is No. 23.
12 Bullet No. 23 isn't just a bullet they find, but
13 Sherry Culhane finds Teresa Halbach's DNA on that
14 bullet.

15 This evidence, this bullet, is proof
16 positive, 100 percent, something the police
17 didn't know, that Teresa was, in fact, shot in
18 the garage, just like Brendan Dassey told the
19 police.

20 Was she shot ten times? You're going to
21 hear, on the 6th when they reviewed and they
22 examined and collected evidence, there were 11
23 separate .22 caliber shell casings that were
24 recovered. Very consistent. Was she shot with
25 this very .22 caliber rifle? Again, of all the

1 rifles in the world, Brendan said it was Uncle
2 Steve's that was hanging on the wall that was
3 used to shoot Teresa.

4 You're going to hear evidence from a man
5 by the name of Bill Newhouse from the Crime Lab.
6 Mr. Newhouse will take that .22 caliber rifle,
7 you will hear, do some test firings, and will
8 match the .22 caliber bullet that was recovered
9 in this case, as well as all of the shell casings
10 that were recovered, and will tell you that this
11 bullet and these shell casings came from this gun
12 to the exclusion of all other guns on earth.
13 This gun. Not just consistent with. They come
14 from this gun.

15 Was Teresa shot in her head as Brendan
16 will tell you? You'll hear from our
17 anthropologist, Dr. Leslie Eisenberg, who, uh, is
18 the bone expert, who will find a piece of bone
19 that she will describe as a piece of Teresa
20 Halbach's cranium, that is, a skull bone piece,
21 and you'll hear and you'll see that beveling,
22 that curve mark there, is actually an entrance
23 wound.

24 They even take, uh, x-rays of that
25 particular cranial piece, and Ken Olson from the

1 Crime Lab will tell you that -- and perhaps you
2 can see those little white dots, uh, that are
3 right next to, uh, the entrance wound -- those
4 little white dots, when they're x-rayed, are
5 lead. That's lead from a bullet. All right?

6 So these are bullet entrance wounds to
7 Teresa's head, just like Brendan Dassey told you
8 happened in the garage.

9 Both Dr. Eisenberg and our pathologist,
10 Dr. Jentzen, will render the opinion that there
11 are at least two gunshot wounds to the head found
12 from these cranial remains. One on the left side
13 of the head, just like Brendan says, and one to
14 the back of the head of Teresa Halbach.

15 Do we believe that, um, Teresa's body
16 was loaded in the rear of the SUV, as Brendan
17 says? Well, you'll see and you'll hear from a
18 blood spatter expert who will talk about the, uh,
19 large stains, the blood stains, that are left
20 from Teresa Halbach. That's her blood, by the
21 way, and we'll show you some close-ups,
22 unfortunately, uh, of that particular area of the
23 cargo area of Teresa's car where, just like
24 Brendan tells you, she's loaded in the back of
25 the cargo area of the SUV.

1 Was her body burnt and mutilated like
2 Brendan tells you? Lots and lots and lots of
3 evidence about this.

4 First of all, the, um, burn area in the
5 burn pit, itself -- You'll also, by the way, hear
6 from some witnesses. Um, Brendan's now
7 stepfather, Scott Tadych, will actually be called
8 to testify. I'm sure he won't want to, uh, but
9 he will say on the 31st, that night, uh, between
10 7:30 and 7:45 in the evening, he saw Brendan and
11 Steven tending that fire, and we'll talk about
12 the flames being so high behind that garage.

13 He not only sees the fire, he sees
14 Brendan and Steven Avery. So an eyewitness will
15 put Brendan there, just like he said he was, back
16 tending that fire.

17 You'll hear about the bones being
18 recovered and being charred, and we've already
19 talked about this particular, uh, bone, but
20 Dr. Eisenberg will also identify every bone that
21 is found. Uh, these, uh, anthropologists are
22 able to look at a little fragment of bone and
23 tell you that it comes from this part of the leg,
24 or that part of the arm, or that part of the
25 spine. And she'll testify, and she'll tell you

1 that every bone of Teresa Halbach is represented
2 in that burn pit in the back.

3 You'll even hear from a dentist, the
4 forensic dentist, Dr. Donald Simley, uh, who
5 found a particular tooth, Tooth No. 31, on Teresa
6 Halbach. On the left is Teresa's x-ray, when she
7 was alive, of that particular tooth, and on the
8 right is what's found in the burn pit. In the
9 burn area. You'll be able to match them up for
10 yourself, that Teresa's Tooth No. 31, um, one of
11 the back teeth on the left side of her jaw, was
12 recovered from the burn area.

13 Brendan says that a car seat was thrown
14 in the fire. Do we have evidence of that? Can
15 we prove that? Can we corroborate that evidence?
16 Absolutely. We will show you, and, in fact,
17 we'll bring into this courtroom, the remains of
18 that burned car seat. Two-man job, ladies and
19 gentlemen. Two people required to throw that car
20 seat, to carry that particular metal grave car
21 seat.

22 Brendan says the SUV was driven to the
23 pit area. Uh, you'll find not only where the,
24 uh, SUV was found, where the, um, crushed -- or
25 car crusher is, you'll also see some diagrams

1 that Brendan actually places where Uncle Steve
2 and I dropped off and hid that vehicle to conceal
3 this crime.

4 Brendan said it was concealed with
5 branches and a car hood. Did that happen?
6 Absolutely. Branches and a car hood, exactly as
7 Brendan described, will be found concealing that
8 car.

9 Members of the jury, two-man job. We'll
10 probably bring in that large piece of heavy car
11 hood to show you, um, that Brendan and Uncle
12 Steve leaned that and concealed that car.

13 Were Teresa's license plates removed as,
14 uh, Brendan said? Absolutely. We find the
15 license plates in a junked vehicle.

16 Was Teresa's car hood opened up by Uncle
17 Steve as Brendan says? Well, on April 3, again,
18 as a result of Brendan's statements, law
19 enforcement swabs -- they take a Q-tip and -- and
20 they swab the hood latch, reaching up underneath
21 the hood, just to see if we can get a -- a DNA
22 profile. Sherry Culhane does. She gets a full
23 profile that's Steven Avery's sweat. Steven
24 Avery's sweat is found on the hood latch, just
25 like should happen if Brendan is to be believed that

1 Uncle Steve went under the hood.

2 Again, facts not known by law
3 enforcement at the time Brendan made these
4 statements.

5 Brendan says that the garage floor was
6 cleaned with paint thinner. You're going to hear
7 from a man by the name of John Ertl, from the
8 Crime Lab, who will talk about a three- or
9 four-foot circle, just to the left and behind the
10 riding tractor, uh, which is a big bleach stain.
11 Uh, Mr. Ertl will talk about that bleach stain.
12 You'll see that bleach and paint thinner are
13 recovered. Uh, but perhaps most importantly,
14 Brendan, himself, hands over to Investigator
15 Fassbender his jeans. He says, these were the
16 pants I was wearing that night, and these pants
17 are splashed with bleach from cleaning Uncle
18 Steve's garage.

19 Brendan said that, uh, Teresa's
20 Halbach's, uh, key was put into the bedroom. You
21 already know that the key was found in Uncle
22 Steve's bedroom.

23 Interestingly, Brendan says that the
24 clothes of Teresa Halbach, after they cleaned up,
25 were burned. They were thrown onto the burn

1 pile. Little bit harder to prove that her
2 clothes are actually burned. But we did it.
3 You're going to hear from a young lady today, uh,
4 by the name of, uh, Katie Halbach. Katie's
5 actually sitting in the front row. Teresa's
6 sister.

7 She knows about Teresa's clothes, and
8 Teresa owned a pair of what's called Daisy
9 Fuentes jeans. They're jeans, you're going to
10 hear, that are sold at a Kohl's Department Store.
11 She kidded her sister. Katie kidded Teresa, as
12 sisters sometimes do, about having those kind of
13 jeans. Um, but you're going to hear that after
14 Teresa's death, those jeans were missing. Those
15 jeans were gone. Teresa was wearing those jeans
16 on the 31st of October.

17 Jeans have little rivets on them, and
18 those of you that are wearing jeans can kind of,
19 uh, take a look at this a little bit later, but
20 Daisy Fuentes has six different rivets that
21 actually say the words "Daisy Fuentes" on them.

22 You're going to hear that the five of
23 those six rivets were recovered from the burn
24 area right behind Steven's, um, garage. Also a
25 zipper was found and some other clothing items

1 were found. So as Brendan Dassey, that nobody
2 else knew about the burning of the clothes,
3 Brendan Dassey, when he says that we burned her
4 clothes, were able to verify that.

5 Was Avery's finger cut and actively
6 bleeding? Of course, it was. We have a photo of
7 it and we have Avery's blood, which Mr. Stahlke,
8 the, uh, blood spatter expert, will tell you how
9 all of those are left.

10 Brendan says that Teresa's cell phone
11 and camera were burned in Avery's burn barrel.
12 Burn barrel was outside the car. You're going to
13 hear and read a report from a gentleman by the
14 name of Curtis Thomas. Mr. Thomas works at the
15 FBI in Virginia. Mr. Thomas got to see all these
16 electronics which were recovered from Mr. Avery's
17 burn barrel. And guess what was in there?
18 Teresa Halbach's Motorola V3 RAZR cell phone,
19 Teresa Halbach's PowerShot A310 digital camera
20 are found, just like Brendan said they would be.

21 Lastly, did Avery's girlfriend call
22 twice on October 31? Phone records will indicate
23 that a woman by the name of Jodi Stachowski, the
24 girlfriend of Steven Avery, called twice on the
25 31st, just like Brendan said.

1 The evidence in this case, members of
2 the jury, isn't just going be based on the
3 statements of a young man, aren't just going to
4 be the fanciful, um, expressions or, um,
5 imagination of somebody. We're going to be able
6 to prove to you in this case that things the
7 public didn't know, things the police didn't
8 know, were provided by a young man who was at the
9 scene. Was he there? Absolutely. Did he help?
10 Absolutely.

11 And so the jury's role, then, will be to
12 decide these facts. Your role as a jury will be
13 to decide whether Brendan's admissions of
14 involvement in this case, knowing things that
15 nobody else knows, that only the murderer and the
16 murderer's accomplice could know in this case,
17 and you are to search for the truth.

18 The evidence, members of the jury, at
19 the conclusion of this case is not going to show
20 that Brendan Dassey was at the wrong place at the
21 wrong time. The evidence is going to show that
22 Brendan Dassey was at the right place at the
23 right time.

24 Teresa Halbach got lucky. She got lucky
25 that there was a young man who showed up. She

1 got lucky that there was one person that could
2 save her life. But the choices that Brendan
3 Dassey made, the choices that he made with his
4 uncle, insured that instead of leaving, instead
5 of just saying, no, instead of talking Uncle
6 Steve out of it, which were all choices that he
7 had, instead of calling 911, instead of calling
8 his mother or a family member, or instead of
9 actively rescuing this girl, Brendan Dassey chose
10 to rape this young girl, to involve himself in
11 her murder, and to help dispose of and mutilate
12 this 25-year-old body.

13 Choices require consequences and
14 accountability, and at the conclusion of this
15 case we're asking that you find the defendant
16 guilty. Thank you, Judge.

17 THE COURT: All right.

18 ATTORNEY FREMGEN: Thank you. I don't,
19 uh, have any audio visuals, so I'll apologize
20 ahead of time. You have to listen to me instead.

21 On October 31 of 2005, Brendan Dassey
22 came home about 3:45 from school, from high
23 school, with his brother, Blaine. Not unusual
24 for Brendan to come home with Blaine. Everyday
25 they came home the same way. Dropped off at the

1 end of the street. The access road, the Avery
2 Road accesses to his house, and began to walk
3 down the road. It takes about five minutes to
4 get to the house from the -- from the mailboxes.
5 And as they're walking, they start to talk about
6 who gets to use the phone first to call a friend
7 to go trick or treating. They race home, and
8 Blaine wins the race, so he gets the phone first.

9 Blaine calls his friend, Jason. They
10 set up a time to meet to go trick or treating,
11 and Brendan plays some video games. He watches a
12 little bit of TV, and about 5:00 his mom comes
13 home and makes supper for Blaine and -- and
14 Brendan.

15 About 20 after 5, maybe 5:30, Blaine
16 leaves to meet Jason, his friend, to go trick or
17 treating, and Barb Tadych, now Tadych, was Janda,
18 meets her boyfriend, fiancé at the time, at about
19 5:30 to go up to Green Bay to visit with his
20 mother who's in the hospital.

21 She leaves, and Brendan is still at home
22 watching TV, playing some video games, and at
23 about 5:45 Blaine's boss, his name is Mike
24 Kornely, Brendan used to work for Mike as well,
25 calls to talk to Blaine. Talks for about five

1 minutes and Brendan takes a message for Blaine
2 that -- that Mike called.

3 Shortly after that time, Steven Avery
4 calls. Steven Avery, obviously, as you know, is
5 Brendan's uncle. Lives about a couple hundred
6 yards from -- couple hundred feet from the house.
7 Calls and asks if he wants to come over to watch
8 a bonfire that -- that Steve has set. Brendan
9 says, yes.

10 About 15 minutes later, Steve calls
11 again, asks Brendan, what's taking you so long?
12 Brendan's kind of putzy, he's going to -- he's
13 changing his pants, putting on a sweatshirt, it's
14 a little bit chilly for an October night, and he
15 goes over to the bonfire.

16 And when he gets there, it's a little
17 bit dark now, about seven-ish. He drives around
18 with his Uncle Steven. Steven has his mother's
19 golf cart, and they're traveling around the yard
20 picking up debris. Wood, an old cabinet, some
21 tires, and a van seat. And as they collect the
22 items, they begin to pile them up next to -- or
23 just to the side of this little area behind
24 Steven's garage where he's got the bonfire going.

25 They throw some items onto the bonfire,

1 put some other items off to the side, and they do
2 that for about four or five trips around the
3 yard, collecting debris, collecting garbage, and
4 they begin to toss the garbage onto the fire
5 throughout the night.

6 After they're done cleaning up the yard,
7 Steven asks Brendan if he wants to help clean up
8 a mess in his garage. Brendan says, yes.

9 They go into the garage, and there's a
10 small area behind the lawnmower as if something
11 had spilled. Steven takes some gasoline and
12 pours it onto this little area, and they use some
13 clothing, old rags, that sop up the mess, and as
14 they begin to clean it up with these old clothes
15 and old rags, they throw them onto the fire, and
16 they do that for about a half hour. Steven tries
17 some gasoline and paint -- paint thinner to help
18 clean up the area, and some bleach as well.

19 After about a half hour, they go back
20 out by the bonfire and Steven gets a call on his
21 cell phone. It's from Brendan's mom, Barb. She
22 calls over to -- to see if Brendan is over by
23 Steven by the bonfire. He says he is. Reminds
24 Steven to tell Brendan that he needs to be home
25 before ten and asks that he has a sweatshirt or a

1 coat on because, again, it's kind of a chilly
2 night.

3 Brendan never talks to his mom, but he
4 knows he now has to be home by ten. They watch
5 the fire for awhile and then tossed the van seat
6 onto the back of the fire. About 9:30, quarter
7 to 10, Brendan goes home. Gets home, watches
8 some TV, and goes to bed.

9 Now -- Now, what I've just done is
10 explain to you what we believe the evidence will
11 show that happened on October 31. As Mr. Kratz
12 has pointed out, that's called the opening
13 statement. I think it's more like a story. It's
14 like reading a novel. A trial is kind of a
15 novel. Novels have characters, and you'll see
16 witnesses. Novels have a plot or some sort of a
17 theme. Each side, the prosecutor and the
18 defense, we each have a theme we want to present
19 to you. And then there's always a conclusion.

20 Now, difference between a trial and a
21 novel is that the conclusion hasn't been written.
22 That's your job. At the end of this case, after
23 each attorney has had an opportunity to present
24 witnesses and evidence for you, had an
25 opportunity to give what's called a closing

1 argument, after the Judge instructs you on the
2 law, it's up to you, and you alone, to finish the
3 story, to decide what actually happened.

4 Now, not unlike a story or a novel,
5 there can be turns and twists. Mr. Kratz pointed
6 out in their theme there are turns and twists,
7 and we'll do the same. There may be similarities
8 between novels and trials, but there are some
9 differences as well.

10 For instance, when I read a story,
11 sometimes I get a little anxious and I want to
12 find out, what -- what happened. Who did it. So
13 I tight -- tend to want to skip some of the
14 pages, pass up on a chapter, maybe even take a
15 peek at the very end. But you can't do that.
16 Part of that, and the obvious reason, is that the
17 Court controls the tempo and flow of information
18 here. We can't just start now and we'll skip to
19 the end to the closing arguments. You need to
20 hear the evidence.

21 And when we talk in jury selection about
22 burden of proof and presumption of innocence, one
23 of the questions I had for you, and I believe
24 most of you raised your hands or at least nodded
25 affirmatively, that you want to hear from both

1 sides, and you can't do that if you skip to the
2 end. You can't do that if you hear just one
3 side.

4 As Mr. Kratz pointed out, they get to go
5 first. They'll present you with number of
6 witnesses, days and days of -- of evidence,
7 exhibits, photographs, testimony. And when
8 they're done, we get an opportunity to provide
9 you with the same.

10 But if you don't presume Brendan
11 innocent, even after they're done with their part
12 of the case, after they rest and allow us an
13 opportunity to present witnesses for you, then
14 you've already skipped to the end of the book.
15 You've passed a number of chapters and -- and
16 you've denied the presumption of innocence.

17 And what I was, uh, most impressed by on
18 jury selection is I believe every person here
19 agreed, raised their hand that, yes, we need to
20 presume Brendan innocent at all times until it's
21 time for you to -- to deliberate, your final time
22 to go from here into the backroom to make your
23 decision.

24 It is important to remember who is on
25 trial. This is not the Steven Avery trial. And

1 it seems so simple to say that, but it's very
2 difficult to do.

3 In February, late or early March, when
4 the Steven Avery trial was -- was, uh, going on,
5 I would often go to court, different county, and
6 attorneys, and even a judge, would ask me,
7 shouldn't you be over in Calumet? Isn't that
8 where the Avery trial's going on? Yep, that's
9 true.

10 My in-laws, my, uh -- my neighbor, even
11 my pastor said the same thing to me, and I'd have
12 to politely tell them that each time, well,
13 that's a different trial. I represent Brendan
14 Dassey, the nephew, and it's a different case
15 entirely.

16 And I believe that's what the State
17 wants to present to you as well. They need to
18 present evidence about the Steven Avery
19 involvement, but I think they want to focus on
20 Brendan as well, and to that I agree. This is
21 not Steven Avery.

22 You'll hear days and days of evidence
23 about Steven Avery, his DNA, his blood found in
24 the SUV, about the bone fragments behind his
25 house in a burn pit, about the bullet fragment

1 found in his garage. You'll hear about the
2 ignition key found in his bedroom.

3 But I don't believe you'll hear evidence
4 about Brendan Dassey's DNA. You won't hear the
5 same evidence involving Brendan Dassey. There
6 won't be any DNA, no blood, no saliva, no sweat,
7 no hair, nothing. No fingerprints. No science
8 that's going to point you to Brendan Dassey. Not
9 the science that points to Steven Avery.

10 But, again, this is Brendan Dassey's
11 trial, not Steven's trial. It's about a
12 16-year-old boy at the time. It's about a
13 16-year-old high school student with below
14 average cognitive abilities. A fourth-grade
15 reading level, a low IQ. It's about a shy
16 introvert, socially inept, suggestible child.
17 That's what this trial is about.

18 You'll learn that this shy, socially
19 inept, suggestible individual will meet two
20 highly trained, intelligent, adult police
21 officers. DCI Agent Tom Fassbender and
22 Investigator Mark Wiegert. They're trained as
23 adult law enforcement officers, trained to obtain
24 confessions, and trained on Brendan Dassey.
25 Alone with these two officers, Brendan makes

1 several statements, as Mr. Kratz has already
2 alluded to in his PowerPoint presentation, in his
3 opening statement.

4 It starts off in a progression where
5 Brendan says Steven Avery killed Teresa Halbach,
6 and it progresses to the point where he indicates
7 he participated. And the State will argue to you
8 later, and offer evidence throughout the trial,
9 through the officers, that they believe that this
10 progression of audio taped statements from -- at
11 the school, the videotaped statements at the, uh,
12 police station, and then the final May 13
13 videotaped statement as a progression to the
14 final truth.

15 What we want you to consider, three
16 things, while you're watching these videotapes,
17 and we agree, very powerful videotapes, very
18 important videotapes, but like in a story, two
19 different stories, there's a different
20 perspective, a different theme. We want you to
21 look at three things. Corroboration. Similar to
22 what the State offered. They want you to look at
23 what it corroborated.

24 We want you to also focus on what is not
25 corroborated. There are dozens of details that

1 go uncorroborated in these statements.
2 Corroboration simply means that there's something
3 independent that can prove the statements are
4 true. Some other independent source that
5 suggests that what you heard is accurate. But
6 there are dozens of instances where their details
7 are uncorroborated.

8 The second to consider is the
9 inconsistencies. There are a number of
10 inconsistencies throughout this progression of
11 statements. When you watch these statements,
12 take note of the different changes from one
13 statement to the next. Simple. Details that
14 seem to be mundane, unnecessary change from
15 statement to statement.

16 And though the State will try to pro --
17 to suggest that it's an escalating progression
18 from the first time they met with Brendan Dassey
19 to the last time he talked to them, it's really a
20 rollercoaster ride of the truth. Up and down.
21 One statement says one thing, the next says the
22 other, and it just goes that way throughout this
23 progression.

24 Some of the changes are not logical.
25 Oftentimes, detached from the purpose of the

1 investigation. Sometimes it's the product of the
2 interviewer. Watch for that as well when you're
3 watching these videos. Oftentimes, you'll hear
4 the investigators asking Brendan to simply change
5 what he said. They ask him to change what he
6 said to meet their theme, to meet the story that
7 they want to present.

8 And last, we want to ask you to watch
9 the video for, lack of a better term, the appeals
10 to emotions the officers make throughout the
11 different statements to Brendan. This
12 16-year-old low-educated -- or excuse me -- low
13 intellectual ability, low cognitive ability, shy
14 introvert, they're asking him, and they're --
15 they're appealing to emotion.

16 Watch how he answers the questions.
17 Watch how the questions are asked. At times it
18 differs. Times they cozy up to Brendan to get
19 the answer they want. At times they pull back
20 from Brendan when he's not giving them the answer
21 they -- they -- they -- they want and they
22 expect. It's like the new puppy dog. When he
23 does what he's supposed to do he gets a pat on
24 the head and a treat. Good job, Brendan. Good
25 job. Good boy. But when it's not what they

1 want, we're leaving Brendan, until you tell us
2 what we want to hear.

3 I believe these statements are very
4 powerful, and I agree with the State that you
5 need to take considerable effort to watch them.
6 Take notes. I encourage you, take notes. We've
7 seen these videos a number of times. You may
8 only get to see this one time. And I would
9 encourage you to take notes throughout. But not
10 just to what is said, take notes on how it's
11 said. How the questions are asked. How it goes
12 from, I didn't say that, or I don't know, to the
13 answer the police got that they wanted.

14 The facial expressions, the distance
15 between the interviewer, or the interrogator, and
16 Brendan, the interaction, physically, between the
17 two. I believe that the -- when you watch the
18 videos carefully, they'll be exposed for what
19 they are, and I think they're just garbage. And
20 just like that, you can discard it.

21 You're -- be instructed by the Judge
22 later that you decide what and how much you want
23 to believe. It's entirely up to you.

24 Now, I think these three focal points of
25 the statements are important to note because the

1 State won't explain to you why there are
2 uncorroborated details, why there are so many
3 inconsistencies, but we will. We'll provide
4 testimony that shows, from his school, describes
5 him as having low cognitive functioning, memory
6 problems, um, fourth-grade reading level. Fails
7 to make eye contact with peers and adults, and
8 avoids participation.

9 A forensic psychologist will also
10 testify, and testify as to tests that he
11 performed on Brendan that indicate that he's a
12 socially inept child, substantially impaired
13 cognitively. He has passive tendencies and
14 vulnerable to suggestion. Coupled with this
15 testimony and the videos, I believe we'll show
16 you how easily Brendan is manipulated and was
17 manipulated. Manipulated by the more
18 intelligent, readily trained, authoritative
19 figures, the two police officers, who presses me
20 when he says good things, things they want to
21 hear, and pull away and sternly isolate him when
22 he says things that they don't want to hear.

23 Despite these statements, the lack of
24 scientific evidence to connect Brendan to Teresa
25 Halbach's murder, the volume of uncorroborated

1 details, the rollercoaster of changes in his
2 statements from one to another, the psychological
3 results in his psychological makeup, his
4 suggestible nature, will all be enough, we
5 believe, for you to find reasonable doubt.

6 And that's what this is about. As the
7 Judge instructed you, you have to decide this
8 case based on what is reasonable doubt. And the
9 Judge will give you another instruction at the
10 end as well, not just before, but also before you
11 retire to make your final decision.

12 If, at the end, you walk into the jury
13 room and you considered all the evidence from all
14 the parties, give them whatever weight the
15 credibility of each witness, whatever weight you
16 wish to give, and you're able to say, well, the
17 State's case does make sense as well as the
18 defense, their case does make sense, you would
19 then have a reasonable doubt, and that's all
20 we're asking you to consider, and you must stop.

21 It's not a contest. This isn't a
22 competition. It's not a basketball game where
23 somebody has to show up and win at the end. You
24 don't have to reconcile the State's case with the
25 defense case. In fact, you shouldn't. That's

1 not your role. Your role isn't to decide in --
2 in that situation who wins. You don't have to
3 reconcile doubt.

4 As the State attempts to prove beyond a
5 reasonable doubt the allegations against Brendan,
6 consider the number of times that we feel Brendan
7 was manipulated during his interrogation, and
8 we'll discuss that with the witnesses, and we'll
9 make further our observations at the end.

10 Consider all of the inconsistencies of
11 the various statements as they go from one to the
12 other. Consider the lies the police told Brendan
13 during his statements.

14 We believe, after careful consideration
15 of all this, in the end, there would be only one
16 conclusion you could write for this chapter in
17 this story, and that would be not guilty. Thank
18 you, very much.

19 THE COURT: Mr. Kratz?

20 ATTORNEY KRATZ: If we could approach
21 just briefly, Judge?

22 (Discussion off the record.)

23 THE COURT: All right, uh -- All right.
24 We're going to adjourn and take a lunch break.
25 We'll be back here at one o'clock. I'll remind the

1 jury, there's no discussion of this case at this
2 time amongst -- amongst you. Uh, all right. One
3 o'clock.

4 (Jurors out at 11:40 a.m.)

5 THE COURT: All right. One o'clock.

6 ATTORNEY FREMGEN: Will this courtroom
7 be locked during the lunch break?

8 THE COURT: Sure. I believe it is.
9 Yeah. Okay. It will be.

10 (Recess had at 11:40 a.m.)

11 (Reconvened at 1:00 p.m.; jurors not
12 present.)

13 THE COURT: Counsel, I'm informed that, uh,
14 one or both of you have something to put on the
15 record at this point?

16 ATTORNEY FALLON: Uh, yes. Good
17 afternoon, Your Honor. The, uh, State would like
18 to take up one evidentiary matter as it may
19 pertain to anticipated cross-examination on a
20 rule of evidence before the jury arrives. I'm
21 not sure if opposing counsel has anything they
22 wish to discuss.

23 THE COURT: Hearing none?

24 ATTORNEY FALLON: Hearing none, um, uh,
25 we noticed during the, um, opening statement, uh,

1 of the defense that there was reference to the,
2 uh, May 13, uh, interview of, uh, the defendant,
3 Mr. Dassey. Uh, we wanted to, uh, take time to
4 point out that, um, first of all, the State was
5 contemplating, if at all, use of that information
6 as part of its rebuttal case and, in all
7 likelihood, would not be introducing that
8 evidence in its case in chief.

9 Uh, as such, um, the law is quite clear
10 that those statements of the defendant can only
11 be offered by the prosecution because then they
12 would be offered by a party opponent, and, uh,
13 uh, as further evidence in support of that
14 proposition, I would cite **State v. Pepin**,
15 110 Wis. 2d 431, and **State v. Johnson**,
16 181 Wis. 2d 470, for the proposition that the
17 defense would not be entitled to elicit that
18 information on cross-examination of an officer
19 unless and until the State introduces that
20 evidence first.

21 So we just wanted to make sure that
22 we're clear on the rules of evidence, because if
23 it were to be elicited by the defense, then it
24 would not be a statement of a party opponent, it
25 would be elicited by the same party.

1 THE COURT: Mr. Fremgen or Mr. Edelstein,
2 any response?

3 ATTORNEY EDELSTEIN: Your Honor, at this
4 time, uh, having heard the argument of Counsel, I
5 would ask the Court reserve any ruling on that
6 matter and allow us an opportunity to review the
7 authority cited by Counsel. Um, we did discuss
8 it very briefly before court convened, uh, after
9 noon here.

10 We have not had the chance to review
11 that matter and, of course, the basis of, uh,
12 some of the State's evidence, which they clearly
13 indicated they intend to introduce, including, in
14 their case in chief, not the least of which is
15 the May 13 telephone call so intricately tied to
16 that statement of May 13, um, I think this needs
17 further examination before we can appropriately
18 respond to the State's, uh, anticipatory
19 objection.

20 ATTORNEY FALLON: Well, uh, just two
21 minor points. Uh, we never mentioned anything
22 about any May 13 statement in the opening
23 remarks, and, uh, number two, just so the record
24 is clear, um, the objection right now, the
25 appropriate objection, to attempt at cross on

1 that would be a hearsay objection. So if the
2 Court chooses to defer ruling until later, that's
3 fine, but we do have an officer taking the stand
4 later this afternoon so...

5 THE COURT: Yeah. I -- I -- I will defer
6 ruling, but it's my understanding, Mr. Edelstein,
7 that the proposed -- or I shouldn't say the
8 proposed -- the statements of -- of the -- from the
9 May 13 interview would be admissions by a party
10 opponents under 9-0-8-0-1 (4)(b1), and, uh, it seems
11 to me, uh, you are precluded at this stage, at
12 least, from asking about them. Uh, again, we'll --
13 we'll flush this out a little later on but, uh, uh,
14 if that's what you're asking --

15 ATTORNEY EDELSTEIN: Your Honor, it
16 may -- it -- it -- I think it's going to depend
17 upon precisely what the officer testifies to. If
18 he goes anywhere near any statements that he
19 participated in, be they con -- characterized as
20 statements or confessions that involved our
21 client, I think irregardless of the date, there
22 are certain areas that we have, particularly on
23 cross, um, leeway to get into.

24 I don't know if that's the purpose of
25 any of his testimony here this afternoon, but if

1 he does go there, I would, uh, ask that -- that
2 we be notified in advance, or at least certainly
3 be given an opportunity prior to any cross, to
4 have this matter addressed by the Court,
5 including an opportunity to review the case as
6 cited by the State.

7 THE COURT: All right. Let's proceed.
8 Mr. Kratz? We'll get the jury in here and we'll
9 get your witness.

10 (Jurors in at 1:07 p.m.)

11 ATTORNEY KRATZ: State would call, uh,
12 Karen Halbach.

13 **KAREN HALBACH,**

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: Karen Halbach, H-a-l-b-a-c-h.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY KRATZ:

21 Q Good afternoon, Mrs. Halbach. Could you tell
22 the -- the jury, please, uh, whether or not you
23 knew a young lady by the name of Teresa Halbach?

24 A Yes, I did.

25 Q You have to pull the microphone down nice and

1 close for us, please. Who was Teresa?

2 A She was my daughter. The second oldest in my family
3 of five children. Um, she's a very caring and very
4 loving young woman. She was very dedicated to her
5 family and friends. She was a hard worker. Um, she
6 had a great sense of humor. Uh, she was also the
7 life of the party.

8 Um, she, um -- She had an ability --
9 ability to make people smile, and I think that's
10 why she enjoyed photography, because kids really
11 responded to her.

12 Q All right. You told me that, uh, there were
13 other, uh -- other children, um, in your family
14 as well. Could you identify them?

15 A Tim is the oldest, and then there's Teresa, and then
16 Mike, and then I have two younger girls, Katie and
17 Kelly.

18 Q Could you tell the jury, please, where Teresa
19 lived?

20 A She lived next door to -- to us. About a quarter
21 mile west of us. My husband and I own the farmhouse
22 and she lived there about a year before she died.

23 Q Going to hand you what's been marked for
24 identification as Exhibit No., um -- No. 1.
25 Could you tell the jury what that is, please?

1 A It's a picture of Teresa.

2 Q We'll be showing the jury, uh, photographs as
3 well. When you say that Teresa lived next door
4 to you, can you describe that a little further,
5 please?

6 A Well, she lived a quarter mile west from us in a
7 farmhouse that we own. She -- her -- her rent was
8 going to go up. She wanted to live someplace cheaper
9 so I said, why don't you move closer to home, so we'd
10 really give you a deal on rent. So she took us up on
11 it and, you know, we enjoyed having her there.

12 Q All right. I know you mentioned briefly about
13 Teresa's background, but did she have, um, um,
14 post high school education?

15 A She went four years to UW-GB. She graduated in '02
16 Suma Cum Laude.

17 Q And GB, that's Green Bay?

18 A Right.

19 Q After that, I think you've already mentioned
20 briefly, of the kind of work that Teresa went
21 into, but can you describe that a little more
22 fully? What, uh -- what type of employment did
23 she have?

24 A In her final semester at GB, she, uh, started an
25 internship with Tom Pearce Photography in Green Bay,

1 and then after she graduated, she continued working
2 with him, and then she realized she wanted to own her
3 own business, so she decided -- she started
4 Photography by Teresa, and, uh, she also worked
5 part-time for *AutoTrader Magazine*.
6 Q All right. This, uh, photography studio, did she
7 have any areas of, uh, expertise within that
8 studio?
9 A Um --
10 Q Any kind of, uh, portraits that she enjoyed more
11 than others taking pictures of?
12 A Well, she especially liked taking picture of kids.
13 She was good with kids. But she also did weddings,
14 graduation photos. Um, if you had an event that you
15 wanted pictures taken, she would gladly do it for
16 you.
17 Q Mr. Wiegert's going to hand you what's now been
18 marked as Exhibit No. 2, if I'm able to do this.
19 Tell us what that is, please?
20 A It's, um, a picture of Teresa.
21 Q All right. Now, Teresa's photography business,
22 you said, also included working, uh, at least
23 part-time for *AutoTrader Magazine*. Um, what were
24 you aware of her duties with that magazine?
25 A It -- Just know people would call *AutoTrader* to have

1 pictures of their vehicles taken. And a photographer
2 would have a certain area. And then Teresa would
3 go -- When somebody in her area would want a picture
4 taken, she would set up a -- an appointment with them
5 and then go take the picture of the vehicle for them.

6 Q Would Teresa ever discuss or describe with you,
7 uh, where some of her clients were that she took
8 pictures of?

9 A Once in a while she would, yeah. If she was over and
10 talking about -- talking with us.

11 Q All right. Had you ever heard -- At least before
12 the 31st of October of '05, had you ever heard
13 the name Steven Avery?

14 A Yes, I did.

15 Q And Teresa, uh, did she ever mention being at
16 Mr. Avery's property before?

17 A Two times she had told me she had taken pictures at
18 the Avery Salvage Yard.

19 Q All right. Mrs. Halbach, were you familiar with
20 the kind of vehicle that, uh, Teresa drove?

21 A Yes, I was.

22 Q Could you describe that for the jury, please?

23 A It's a Toyota RAV 4.

24 Q I'm showing you what's been marked as Exhibit No.
25 3. Can you tell us what that is, please?

1 A It's a picture of Teresa in front of her vehicle.

2 Q Before, um, moving into the investigation, um,

3 itself, you, I think, had mentioned that Teresa

4 had some younger sisters. Uh, could you tell me

5 their names, please?

6 A Katie and Kelly.

7 Q I'm sorry?

8 A Katie and Kelly.

9 Q How much younger were Katie and Kelly than she?

10 A Um, I think there's 11 years difference between Katie

11 and Teresa, and then Kelly's two years younger than

12 Katie.

13 Q And could you describe the kind of relationship

14 that Teresa had with her younger sisters?

15 A Um, they were very close. Teresa always wanted a

16 sister. And they spent a lot of time together

17 shopping or watching movies or...

18 Q All right. Did Teresa spend, uh, time with her

19 sisters, um, at your home ever?

20 A Yeah, they did, and, um, Teresa would come over

21 Sunday nights a lot, because their three favorite

22 shows were on, so they'd watch it altogether and goof

23 off and...

24 Q All right. Were Sunday nights kind of a, um --

25 a -- a family night or regular time for all of

1 you to get together?

2 A Right. The kids would always stop in on a Sunday

3 sometime during the day.

4 Q Karen, I'm going to direct your attention to

5 Sunday, October 30 of 2005. Do you remember that

6 day?

7 A Yes.

8 Q Could you tell the jury what you remember about

9 Sunday, the 30th of October?

10 A Um, my dad's birthday is October 31, Halloween, so

11 the day before, my whole family got together at his

12 house and we just celebrated his birthday during the

13 day.

14 Q Was Teresa in attendance at that party?

15 A Yes, she was.

16 Q Were the rest of, uh, the siblings there as well?

17 A Yes, they were.

18 Q What happened that night if you recall?

19 A That night, um, we milked cows, and then Teresa came

20 home from -- about seven, because *Extreme Makeover*

21 *Home Edition* was coming on and she wanted to watch it

22 with the girls.

23 Q She was at your house?

24 A Right. At our house.

25 Q All right. Do you know about what time Teresa

1 left your home on the 30th?

2 A I would say it was after ten.

3 Q Um, did you know what Teresa's, um, work schedule

4 was the next day? That is, the 31st?

5 A No, I did not.

6 Q How often during the week would you speak with

7 your daughter, Teresa?

8 A She might stop in once or twice, or call, depends on

9 how busy she was, or if we were busy on the farm, you

10 know.

11 Q On the 31st of October, 2005 how old was Teresa?

12 A Twenty-five.

13 Q Had Teresa ever been married?

14 A No.

15 Q And at that time, that is, on the 31st of

16 October, 2005 was Teresa involved in a

17 relationship? Did she have a boyfriend or

18 anything?

19 A No.

20 Q Mrs. Halbach, when was the first time that you

21 had heard that Teresa was missing?

22 A On Thursday, November 3, about one o'clock, Tom

23 Pearce called me and he was concerned about Teresa

24 because she hadn't showed up at the studio Tuesday or

25 Wednesday, and -- because she always stopped in at

1 least once a day, even if she wasn't really busy that
2 day. But he said what -- what -- what really worried
3 him was that her cell phone, her voice mail, was
4 full. He got a message saying that, and that was
5 very unusual for Teresa because that was her business
6 phone als -- also, and for her not to return
7 somebody's message was a very odd -- so that worried
8 me too.

9 Q Do you know what kind of, uh, cell phone Teresa
10 had?

11 A Yes, I do.

12 Q Tell the jury, please?

13 A She had a Motorola RAZR V3 or something like that.

14 Q I'm going to hand you what has been marked for
15 identification as Exhibit No. 8. Tell the jury
16 what that is, please?

17 A It's a receipt for her cell phone.

18 Q And do you know if that receipt has a date on it?

19 That is, when she purchased her Motorola RAZR
20 cell phone?

21 A Yes. It says August 30, 2005.

22 Q I'm going to show you, also, what's been marked
23 as Exhibit No. 9. I'm going to have you turn to
24 the last page of that exhibit and ask if you, um,
25 can identify this as the cell phone, um, provider

1 contract with a Cingular phone?

2 A Yes, it is.

3 Q Does that include -- And, by the way, is that the
4 same date of October 30, 2005?

5 A Yes, it is.

6 Q And does it include the make and model of her
7 phone towards the bottom? That is, a, uh,
8 Motorola V3 --

9 A Yes, it does.

10 Q -- phone? Mrs. Halbach, on the 3rd of November,
11 after being informed by Teresa's business partner
12 that, uh, she was missing, could you tell the
13 jury what, uh, you, uh, and other family members
14 did?

15 A Um, I called Teresa's two brothers, Tim and Mike, to
16 ask if they had heard from her. They said, no. And
17 I told them about Tom Pearce calling me, so they got
18 worried, too. And then, um, they started calling
19 people around. And in the meantime, my husband was
20 out plowing in a field, I went and brought him home
21 and I said, we need to look for Teresa to find out
22 where she is. And then, um, he went and -- Teresa
23 had a roommate. He went and talked to the roommate,
24 asked if he saw -- if he had seen her in the last
25 three days. And while he did that, I called

1 *AutoTrader Magazine* to see if -- when the last time
2 they had heard from her, and I didn't get an answer
3 right away, so then I called the Calumet County
4 Sheriff's Department.

5 Q Were there other citizens -- not only family
6 members but other citizens -- uh, even on that
7 first day, even on the 3rd, that were trying to
8 help locate Teresa?

9 A Right. We called Teresa's friends, or Tim and Mike
10 started, and they, in turn, called other people. We
11 had a lot of people looking for her by phone.

12 Q Were you able, even on that first day, even on
13 the 3rd of, uh, November, to try to retrace her
14 steps from when she was last seen? That is, on
15 the 31st of October?

16 A Yes. Mike -- my son, Mike, was able to get into
17 Teresa's cell phone records, and he knew that she --
18 I'm not sure how to say it or --

19 Q Just go ahead.

20 A He knew that she hadn't looked at her messages or
21 where her -- when she -- when her last call was, and
22 that was on Monday, so he knew that was odd. So we
23 knew something was up so we kept looking for her.

24 Q All right. The fact that Teresa hadn't retrieved
25 her voice mail messages since the 31st, um,

1 obviously that worried you?

2 A Right.

3 Q Were you able, or were you, with the assistance
4 of your sons, able to determine the last stops or
5 the last places that Teresa was on the 31st?

6 A Um, I know the boys knew where her last stops were on
7 the 31st, but I'm not sure how they found that out.

8 Q Okay. Do you know if they were using cell phone
9 records to try to retrace her steps on the
10 31st?

11 A They were doing that, yes.

12 Q Were you told and did you have any discussions
13 with them that, uh, her last appointment that
14 afternoon, that is the 31st, was with, um, Steven
15 Avery, or at least with that property?

16 A Yes, I was.

17 Q Mrs. Halbach, between the 3rd of November and the
18 4th of November, did you work with any outside
19 agencies in trying to search for Teresa? In
20 other words, did you work to develop any missing
21 person posters?

22 A Yes, we did.

23 Q Can you describe that process for us, please?

24 A On Thursday night Jay Breyer called us. He works
25 with Y.E.S., Youth Educated in Safety. And helped us

1 put together a missing person poster for Teresa.

2 Q Have you look at the back of that exhibit that

3 I've given you. What number is that?

4 A Five.

5 Q Exhibit No. 5, can you tell us what that is,

6 please?

7 A This is Teresa's missing person poster.

8 Q All right. On the 3rd, and especially on the

9 4th, of November, do you recall citizens, um,

10 distributing thousands of these posters

11 throughout Northeast Wisconsin?

12 A Right. Yes, we did. That was mainly what we did on

13 Friday, was distribute posters.

14 Q Do you remember what other efforts citizens, that

15 is, family members and other citizens, engaged

16 in, uh, that Friday? We're talking Friday, the

17 4th?

18 A Um, my understanding -- I stayed home with our two

19 younger daughters, but they would hand out posters,

20 but they'd also keep their eyes open alongside of the

21 road, you know, in case she had an accident or, um --

22 I believe they -- if -- they thought she went to

23 Green Bay and back and had an accident, they followed

24 them roads, looked in the ditches.

25 Q All right. Were you aware that law enforcement,

1 that is, the police departments, um, were also
2 performing aerial, that is, uh, airplane
3 searches?

4 A Yes.

5 Q Um, was, uh, Teresa or her vehicle found either
6 that Thursday or that Friday?

7 A No.

8 Q Tell us, then, what the, um, family and friends
9 of Teresa planned for Saturday, the 5th of
10 November?

11 A Teresa had a good friend, um, Ryan Hillegas, and he
12 got a group of people together at Teresa's house, and
13 they organized searches in the area in Manitowoc
14 County where she was last seen, or her last three
15 appointments on Monday, so they wanted to search them
16 areas for sure, and they searched all along roadways,
17 under bridges. You know, our main thought was she
18 had -- had a car accident, and, um, I think that's
19 what they focused on.

20 Q You had mentioned that, uh, your, um, husband and
21 you had, um, milked cows at least during one of
22 the -- the days. Could you describe whether or
23 not that's the family business? That's what you
24 guys do?

25 A That's what we do, yeah. We're dairy farmers.

1 Q On Saturday, the 5th of November, um, were you
2 aware of a young, uh, woman, um -- actually two
3 women, um, Pam and Nikole Sturm being involved in
4 the search efforts?

5 A Yes, I was.

6 Q Could you tell the jury who is Pam Sturm?

7 A Pam Sturm is my husband's first cousin.

8 Q All right. And do you know where Ms. Sturm and
9 her daughter, Nikole, were searching?

10 A Um, they had asked Ryan Hillegas if, um, anybody was
11 searching the Avery Salvage Yard. He didn't think so
12 though. So she said her and her daughter were going
13 to go search the junkyard.

14 Q All right. I know this is difficult, Ms., uh --
15 Ms. Halbach, but later that day did you receive
16 any news?

17 A Pam and Nikole stopped at our house later in the day
18 and told us that they had found Teresa's vehicle.

19 Q Were you asked at all to either identify, um, the
20 vehicle or, uh, to further assist in law
21 enforcement efforts that day? That is, Saturday?

22 A Yes, I was.

23 Q And what did you do Saturday, if you remember?

24 A Um, I think Investigator Wiegert -- Wiegert called me
25 after he was in contact with Pam Sturm and he asked

1 me if Teresa's RAV 4 had a Lem -- LeMieux Toyota
2 sticker on it.

3 Q If her what? I'm sorry.

4 A If her RAV 4 had a LeMieux Toyota sticker on it.

5 Q Her vehicle?

6 A Yeah.

7 Q All right. What is a LeMieux Toyota sticker?

8 A That's where she bought it. In Green Bay.

9 Q All right. Do you know if you were able to
10 assist them in that?

11 A I didn't know for sure, but I knew Mike did, so I
12 called Mike and asked him, and Mike called me back
13 or -- or he said, yes, it did, and then I told
14 Mr. Wiegert it did.

15 Q All right. What's the next you heard from law
16 enforcement?

17 A I -- I draw a blank. I can't think.

18 Q Okay. Um, how often was it that law enforcement
19 was contacting you or keeping you informed about
20 the investigation?

21 A Very often. They kept us well-informed.

22 Q Let me just ask you, Mrs. Halbach, uh, we'll get
23 into some other, um, easier areas, but, uh,
24 within the next day or two, uh, were you informed
25 that human, uh, remains were found that they

1 believed to be your daughter Teresa?

2 A Right. Yeah.

3 Q Do you remember when you were told that?

4 A I think we knew human remains were found Tuesday, but

5 I think on Wednesday, the 9th, we were told that they

6 were identified as Teresa's.

7 Q All right. Mrs. Halbach, were you aware of a,

8 um -- a camera, a digital camera, that your

9 daughter had provided to her by *AutoTrader*

10 *Magazine* to take pictures of her cars at least

11 for that part of her job?

12 A Yes.

13 Q I'm going to show you what's been marked as

14 Exhibit No. 6, ask if you can tell the jury what

15 that is, please?

16 A It's the box for the digital camera.

17 Q Now, Exhibit No. 6 indicates a, um, PowerShot

18 A310 by Canon. Do you know, um, where this box

19 was located?

20 A In Teresa's house.

21 Q Teresa tend to keep boxes and receipts and things

22 like that?

23 A Yep, she did that.

24 Q Kind of a pack rat?

25 A Well, I -- I call it organized.

1 Q Okay. Were you aware of a, um -- a personal, um,
2 data assistance, something called a PDA, that,
3 uh, Teresa also owned?

4 A Yes, she had one of them.

5 Q I show you what's been marked, uh, for
6 identification as Exhibit No. 7. Tell us what
7 that is, please?

8 A It's the box for her PDA.

9 Q And as long as Mr. Wiegert's up, I'm going to
10 also give you Exhibit No. 10. Tell us what that
11 is, please?

12 A It's a receipt for PDA that she bought at Target
13 November 15, 2004.

14 Q Now, PDA, at least the most common version is, or
15 sometimes it's called a Palm Pilot, do you know
16 what these things do?

17 A I think you can put your appointments in it, your
18 schedules, that type of thing.

19 Q All right. And the Palm Zire 31 brand, uh, the
20 box that we're looking at, um, uh, in the Exhibit
21 that you've just identified, um, was that, again,
22 found in Teresa's apartment?

23 A Yes, it was.

24 Q Just a couple more questions, Mrs. Halbach. The
25 investigation, um, into Teresa's disappearance

1 and her death, uh, required DNA samples being
2 provided. Were you asked for one of those?

3 A Yes.

4 Q And do you know, um -- Do you know about when you
5 had to give a DNA sample to compare with some of
6 the, um, materials that were --

7 A I would -- I think it was in the spring.

8 Q All right. But you did provide a -- a -- a
9 sample of I think it was your saliva; is that
10 right?

11 A Right.

12 Q The last question -- last, uh, difficult question
13 I have for you, Mrs. Halbach, is at anytime after
14 the 30th of October, that evening after 10:00 on
15 the 30th of October, 2005, uh, had you ever seen
16 or heard from your daughter, Teresa Halbach?

17 A No, I did not.

18 ATTORNEY KRATZ: At this time, Judge, I
19 would move the admissions of Exhibit 1 through 10.

20 THE COURT: Any objection?

21 ATTORNEY FREMGEN: What was 8 and 9?

22 ATTORNEY KRATZ: The two receipts and the
23 contract.

24 ATTORNEY FREMGEN: No objection.

25 THE COURT: Mr. Kratz, did you -- did you

1 introduce an Exhibit 4?

2 ATTORNEY KRATZ: That was, uh --

3 Q (By Attorney Kratz) I did show you. That was
4 the, uh -- it was a photo of your family. Do you
5 still have it up there?

6 A No, I gave it back.

7 ATTORNEY KRATZ: Oh. Mr. Wiegert, let's
8 put it up there.

9 Q (By Attorney Kratz) We were talking about your
10 family, and I'll show you Exhibit No. 4.

11 ATTORNEY KRATZ: I apologize, Your
12 Honor.

13 Q (By Attorney Kratz) I'm showing you Exhibit No.
14 4. Tell us what this is, please?

15 A It's a family picture that our daughter, Teresa, set
16 up. She didn't take the picture, because she was --
17 she's in it, but she set it up.

18 Q Uh, timers --

19 A Uh, no. Mike's girlfriend took the picture. She
20 snapped it.

21 Q She just set it up. Can you identify just, uh,
22 briefly for us the people in this picture?

23 A Um, from left to right in the back row is my husband
24 Tom, and then there's Katie and Kelly, and in the
25 front row is Tim, and then myself, and Mike holding

1 our dog, and Teresa's on the end on the right.

2 Q All right.

3 ATTORNEY KRATZ: With that, and with
4 that offer, Judge, that's all the questions I
5 have of this witness. Thank you.

6 THE COURT: Any objection?

7 ATTORNEY FREMGEN: No, Judge.

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

9 Cross?

10 ATTORNEY FREMGEN: I just have a few
11 questions.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY FREMGEN:

14 Q Prior to November 5, 2005, have you ever heard of
15 the name Brendan Dassey?

16 A No, I don't think I did.

17 Q Had Teresa Halbach ever mentioned -- Teresa, your
18 daughter, obviously -- ever mentioned anything
19 about a Brendan Dassey? You mentioned she had
20 mentioned Steven Avery's name before; correct?

21 A Right.

22 Q Had Brendan's name ever been mentioned by her?

23 A No.

24 ATTORNEY FREMGEN: Okay. Nothing else.

25 THE COURT: Any redirect?

1 ATTORNEY KRATZ: No. Thank you, Judge.

2 THE COURT: You may step down.

3 ATTORNEY KRATZ: State will call Katie
4 Halbach to the stand.

5 THE CLERK: Please raise your right
6 hand.

7 KATIE HALBACH,

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

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

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

14 DIRECT EXAMINATION

15 BY ATTORNEY KRATZ:

16 Q Hi, Katie. How old are you?

17 A I'm 15.

18 Q Could you tell us, please, who Teresa Halbach
19 was?

20 A She is my sister.

21 Q And was Teresa older or younger than you?

22 A She was older than me.

23 Q How much older?

24 A Eleven years.

25 Q Now, some sisters are closer than others. Could

1 you describe how close you were to Teresa and
2 what kinds of things you used to do together?

3 A Um, we were pretty close. We would -- Well, me and
4 my little sister would go over to Teresa's house,
5 sleep over, or we would go shopping, or things like
6 that.

7 Q All right. What kind of things would you shop
8 for?

9 A Um, clothes, mostly.

10 Q Do you know where Teresa did, uh, most of her
11 shopping? Or was it all over?

12 A Um, it was all over pretty much.

13 Q Teresa ever shop at a department store called
14 Kohl's?

15 A Yes, she did.

16 Q Katie, were you the closest in age, at least, uh,
17 female sibling, the closest to Teresa?

18 A I am.

19 Q And your other sister is younger; is that
20 correct?

21 A Yep.

22 Q By the way, would you, um, do other recreational
23 kinds of things with Teresa?

24 A Um, I guess like we would -- She would take us to
25 parks and we would go for walks and things like that.

1 Q Was Teresa involved in coaching any sports?

2 A Yes. She coached my little sister's volleyball team.

3 Q Okay. And would you ever go watch those games or

4 anything?

5 A I did.

6 Q I'm going to show you what has been marked as

7 Exhibit No. 11. Can you tell us what that is,

8 please?

9 A This is a picture of the volleyball team that she

10 coached.

11 Q And who is she?

12 A My sister, Teresa.

13 Q Is she in that picture?

14 A Yep. She is in the back row, first person on the

15 left.

16 Q All right. I think you had mentioned, Katie,

17 that, um, after shopping with, uh, your sister,

18 um, it wasn't unusual for you guys to buy some

19 clothes together; is that right?

20 A Yep.

21 Q Had you ever purchased or gone with Teresa, uh,

22 and purchased any specific articles of clothing

23 like jeans or anything like that?

24 A We would.

25 Q As her closest sister, at least closest in age,

1 uh, I know we talked about clothes, generally,
2 but you -- were you aware of the jeans that she
3 owned?

4 A I know most of them.

5 Q Do you know and can you tell the jury, please,
6 what kind of jeans your sister owned?

7 A I know of a pair of Daisy Fuentes jeans she had.

8 Q Okay. Let's just start with those. What are
9 Daisy Fuentes jeans?

10 A Um, it's a brand name of jeans that is normally found
11 at Kohl's.

12 Q Okay. How is it that you remember the Daisy
13 Fuentes jeans?

14 A Um, one day I noticed that she was wearing them and I
15 told her that Daisy Fuentes was an old person so she
16 was wearing old people's jeans.

17 Q Okay. At some point, Katie, had you, um, been
18 told that your sister, Teresa, had been killed?

19 A Yes.

20 Q After, um, Teresa's death, were you asked to go
21 to her, um, apartment, her residence, and look
22 through some of her clothing?

23 A Yes.

24 Q When you looked through your sister's clothing,
25 were you able to find those Daisy Fuentes jeans

1 that you teased her about?

2 A No, I did not.

3 Q Mr. Wiegert's handed you a pair of, uh -- of

4 jeans with an exhibit sticker on them. I think

5 it's a gray or a blue sticker. Can you tell me

6 what exhibit number that is?

7 A Exhibit 13.

8 Q And have you ever seen those jeans before?

9 A Yes, I have.

10 Q What is Exhibit No. 13?

11 A Um, it's a pair of jeans that I picked out at Kohl's

12 one time that I thought were similar to the jeans

13 that Teresa owned.

14 Q Did a law enforcement officer or officers take

15 you on a -- a shopping trip and have you find the

16 jeans that your sister used to own?

17 A Yes. I went with Mr. Fassbender.

18 Q Okay. If you can hold up Exhibit No. 13 and show

19 the jury, please, um, what kind of jeans are

20 those?

21 A They are Daisy Fuentes jeans.

22 Q And are those jeans, uh, at least to the best

23 that you were able to determine, uh, the same or

24 similar jeans that your sister had owned prior to

25 her death on the 31st of October?

1 A They are.

2 Q You know what a rivet is on a jean?

3 A Um, I believe it is one of these little buttons that

4 holds the jeans together.

5 Q Okay. And those rivets on those jeans, do they

6 say anything on them?

7 A They say "Daisy Fuentes".

8 Q I'm going to have you give those jeans back to

9 Mr. Wiegert at this time. I'm going to have

10 Mr. Wiegert take them over to the ELMO machine

11 and see if we can show the jury what we're

12 talking about. Just as he's doing that, those

13 little brass buttons, or those, um, little

14 things, are those the rivets that you were

15 talking about?

16 A Yes.

17 Q When Mr. Wiegert zooms in, it looks like that's

18 as far as it zooms in, the little black lettering

19 that goes around the rivet, um, since you've seen

20 it, and we have a hard time seeing it, that says

21 "Daisy Fuentes"; is that right?

22 A Yes.

23 Q Katie, do you know what a lanyard is?

24 A I believe it's one of those key chain things you put

25 with your keys that you can wear around your neck.

1 Q Okay. And do you know if you ever gave your
2 sister, Teresa, a, uh, key chain thing, a
3 lanyard, for around her neck?

4 A I did.

5 Q Mr. Wiegert is going to have another exhibit
6 marked for you, and we're going to show you, I'm
7 sure, what will be Exhibit No. 14.

8 Q Tell the jury what that is, please?

9 A It is a blue lanyard that says "Air National Guard".

10 Q Do you recognize Exhibit No. 14?

11 A Yes. It is the lanyard that I gave Teresa.

12 Q And do you remember where you got that and where
13 you -- when you gave it to Teresa?

14 A It was two summers ago. I was at the EAA Convention,
15 and there was a booth, and they were giving away free
16 lanyards.

17 Q Now, that particular lanyard, if you can hold it
18 up for the jury so that they can see what you're
19 talking about, it's got a plastic thing on the
20 end of it. Can you show them that? That plastic
21 end to the lanyard, do you know what that goes
22 into?

23 A Um, a fob.

24 Q All right. And can you tell the jury what a fob
25 is, if you know?

1 A Um, it's another piece of cloth, the same color, and
2 then it's connected to a key chain.

3 Q To help the jury, I'm going to show you Exhibit
4 No. 12, which is a photograph. Ask if you have
5 seen that before?

6 A Yes, it's the same lanyard.

7 Q And does Exhibit No. 12, that is, the photograph,
8 include the key part of it, that is, the fob that
9 clicks in or goes into that particular key chain?

10 A It does.

11 Q Does that key chain and that fob depicted in
12 Exhibit No. 12 look the same or similar as the
13 key chain and, uh, fob, or lanyard and fob, that
14 you gave to your sister a couple of summers ago?

15 A It does.

16 Q Do you know whether or not your sister ever used
17 that key chain and -- and, uh, um, that lanyard
18 and fob?

19 A She did.

20 Q How do you know that?

21 A Because before I gave her the lanyard she had a
22 different one and then I remember her switching them.

23 Q Okay. Katie, on Sunday nights did your sister,
24 Teresa, and you make a habit of watching some
25 television shows together?

1 A We did.

2 Q Where would you guys usually watch those shows
3 together?

4 A Either at our house or hers.

5 Q All right. Do you remember the day before she
6 was killed, that is, on the 30th of October, if
7 you and Teresa and your other sister spent that
8 night together and watched those shows together?

9 A Um, I believe we were at my grandpa's house for his
10 birthday.

11 Q All right. You remember that birthday party that
12 night?

13 A Yeah.

14 Q Or that day at least?

15 A Yeah.

16 Q And the same question that I asked of your mom,
17 after the 30th of October, had you ever seen or
18 heard from your sister, Teresa?

19 A I did not.

20 Q Last question for you. Um, do you know what kind
21 of soda that, uh, your sister, Teresa, used to
22 drink? Did she have a brand of soda she liked?

23 A Um, she likes cherry sodas a lot.

24 Q Do you know if she liked Wild Cherry Pepsi brand
25 soda?

1 A She did.

2 Q That's all I've got, Katie. Thank you.

3 ATTORNEY KRATZ: Judge, I would move the

4 admission of -- Uh, Berta, I'm sorry.

5 THE CLERK: Um --

6 ATTORNEY KRATZ: Eleven through fourteen?

7 THE CLERK: Eleven, twelve and thirteen.

8 ATTORNEY KRATZ: And 14.

9 THE COURT: And 14.

10 THE CLERK: And 14.

11 ATTORNEY KRATZ: Eleven through fourteen,

12 Judge.

13 THE COURT: Any objection, Counsel?

14 ATTORNEY FREMGEN: I would like to be heard

15 on 13.

16 THE COURT: Uh --

17 ATTORNEY FREMGEN: No objection to 11,

18 12 and 14.

19 THE COURT: Okay. Eleven, twelve and

20 fourteen are received. You want to be heard outside

21 the presence of the jury or here?

22 ATTORNEY FREMGEN: Uh, at a break we can

23 take that up.

24 THE COURT: Okay. Cross?

25 ATTORNEY FREMGEN: No, sir. Thank you.

1 THE COURT: All right. You may step down.

2 ATTORNEY KRATZ: May we just have a brief
3 sidebar, Judge?

4 THE COURT: Sure.

5 (Discussion off the record.)

6 ATTORNEY KRATZ: State would call Tom
7 Fassbender to the stand.

8 **THOMAS FASSBENDER,**

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

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

13 THE WITNESS: Thomas J. Fassbender,
14 F-a-s-s-b-e-n-d-e-r.

15 **DIRECT EXAMINATION**

16 BY ATTORNEY KRATZ:

17 Q Mr. Fassbender, could you tell us how you're
18 employed, please?

19 A Yes. I'm a special agent with the Wisconsin
20 Department of Justice, Division of Criminal
21 Investigation, DCI.

22 Q What are your duties with DCI?

23 A Uh, currently I investigate, uh, crimes, such as
24 homicide, uh, or crimes that are statewide importance
25 in nature, and I'm a part of what we call a General

1 Investigations Bureau.

2 Q Could you speak up just a little bit? I'd

3 appreciate it. Were you employed in that

4 capacity on November 5 of 2005?

5 A Yes, I was.

6 Q And on November 5 of 2005, uh, were you called to

7 a location which has been come to known as the

8 Avery salvage property?

9 A Yes, sir.

10 Q How is it that you got called to that location?

11 A I was called by my supervisor, who, uh, informed me

12 that the Calumet County Sheriff had asked for DCI's

13 assistance at that location, and it had to do with,

14 uh, an investigation into a missing person, which was

15 Teresa Halbach.

16 Q Tell the jury, if you would, please, about what

17 time, um, you got to that location?

18 A I arrived at, uh, that location, which was the Avery

19 Salvage Yard, just a little after 2 p.m. that

20 afternoon.

21 Q Tell the jury, please, what, if anything, you

22 observed upon your arrival at that salvage yard?

23 A When I arrived at the salvage yard, um -- salvage

24 yard is located at the end of a road named Avery

25 Road, and at the end of that road, uh, there was a --

1 a law enforcement presence set up there. Kind of
2 like I guess what you would called a command post,
3 and met with, um, members of law enforcement there,
4 uh, to include the sheriff of Calumet County.

5 Uh, received a -- a real brief, uh,
6 briefing at that time, and, uh, subsequently went
7 down into an area known as the -- the salvage
8 yard where the -- the salvaged vehicles were
9 maintained, and there was another, uh, law
10 enforcement presence down there, uh, so to speak,
11 like a checkpoint, um, and -- and it was from
12 that location that I was shown where a vehicle --
13 Teresa's vehicle, had been located.

14 Q I don't know if you told us, but, uh, who also
15 was there when you got there?

16 A Well, for certain, uh, the Calumet County Sheriff
17 Jerry Pagel was there, and other law enforcement
18 officers, to include officers from, uh, the Manitowoc
19 County Sheriff's Department and Calumet County
20 Sheriff's Department.

21 Q After your arrival, uh, was there any discussion
22 regarding what role, if any, the Wisconsin
23 Department of Justice would take in the
24 investigation?

25 A Yes. Uh, as I mentioned, Sheriff Pagel had requested

1 DCI's assistance. Um, with that being said, I
2 learned that, um, the Manitowoc County Sheriff's
3 Department had requested the Calumet County
4 Sheriff -- Sheriff's Department to take the lead role
5 in the investigation, and, uh, with that, they --
6 Sheriff Pagel requested DCI's assistance. So, in
7 essence, we were there, uh, to assist in the
8 investigation, and, ultimately, I was asked, uh, to
9 join Investigator Mark Wiegert as a lead investigator
10 in the investigation.

11 Q Is it unusual, Agent Fassbender, for DCI to
12 become involved in major crime investigations?

13 A No, that's not unusual.

14 Q After your arrival at the, um, scene, um, were
15 you able to survey, if you will, the, uh -- the
16 property, itself?

17 A Yes.

18 Q And I've handed you or had handed to you an
19 exhibit. Can you tell us -- I think it's Exhibit
20 No. 15. Tell us what that is, please?

21 A This is Exhibit 15, and this is an aerial photograph
22 overview of, uh, the Avery Salvage Yard, including
23 residences, um, on or around that property.

24 Q I've had Mr. Wiegert hand you a laser pointer.
25 And, actually, we'll be using the large screen to

1 my right, although I'm sure the jurors can see
2 with the smaller screens as well.

3 Uh, if you'd be so kind as to refer to
4 Exhibit No. 15 and show the -- and describe for
5 the, uh, jurors the major landmarks of the Avery
6 salvage property.

7 A As I mentioned before, uh, this road right here
8 running north and south is Avery Road. As you come
9 south on Avery Road to this intersection right here,
10 to the west, or to your right if you're going south,
11 is a driveway, essentially, that goes all the way
12 down to two residences. There's a trailer at the end
13 right down here. That is, uh, the residence or the
14 trailer where Steven Avery resided. Uh, there's a,
15 um, unattached garage there also.

16 The residence just to the east of Steven
17 Avery's residence, uh, is the residence of
18 Barbara Tadych. Uh, at that time it's Barbara
19 Janda. And that, uh, is the residence that, um,
20 Mr. Das -- Dassey, uh, resided in. Brendan
21 Dassey.

22 Uh, there's an abandoned trailer right
23 there along this driveway. Going back to the
24 intersection at the end of Avery Road, uh, is
25 where the auto salvage business is essentially

1 located, as well as several other -- or two other
2 residences.

3 Uh, this building right here, this large
4 building, is where the au -- auto salvage office
5 and, uh, workshop was located. There's an
6 impound area right in here that has three
7 buildings associated with it. That's an old
8 office, I believe, and shop area.

9 And right here's the residence of, uh,
10 Al and Delores Avery, or Mr. and Mrs. Avery,
11 Steven Avery's father.

12 Uh, if you go -- continue south when you
13 get to this intersection -- And, by the way, this
14 is where that command post would have been set
15 up, that law enforcement presence that I was
16 talking about.

17 If you continue south, there's another
18 residence located right in this area, which is
19 Chuck Avery's residence, which would be Steven
20 Avery's brother.

21 And then continuing south, you go down
22 into what was commonly referred to as the, uh,
23 salvage yard, or the pit, and that was, uh,
24 called that, I believe, because it used to be an
25 old quarry, uh, area, similar to the quarries

1 that are located around the salvage yard. So you
2 go down -- uh, descent into this area where all
3 the vehicles are located, uh, into the, uh,
4 salvage yard area.

5 Q So that the jury has a, um -- a better
6 understanding of, uh, some of the, um -- the
7 areas, I'm going to show you, first, what has
8 been marked as Exhibit No. 16. Tell us what this
9 is, please?

10 A That would be the northwest corner of the salvage
11 yard. And I had mentioned, uh, Steve Avery's and
12 Brendan Dassey's residences. Right here is the
13 trailer that Steven Avery resided in and his
14 unattached garage.

15 Uh, that's that driveway I was talking
16 about coming to that location, and this is the,
17 uh -- right here I'm pointing at the northwest
18 corner of the entire, um, Avery properties.

19 Next, or just to the east, of Steven
20 Avery's residence is Brendan Dassey's, uh,
21 residence, or where he resided, his unattached
22 garage, also, which would make up, and then the
23 surrounding, uh, curtilage or yards of both, uh,
24 residences.

25 Q One of the other corners of the property I'm now

1 showing you as Exhibit No. 17, tell us what that
2 is, please?

3 A This would be the southeast corner of the, uh, Avery
4 Salvage Yard. Um, you can see that berms, or
5 possibly see that berms, are built up around these
6 areas. Uh, to the south of that is -- is a -- a
7 quarry, a privately owned quarry, Radandt Quarry, and
8 to the east of that is a field -- field area.

9 Uh, so -- And you can see the salvaged
10 vehicles here, some salvage vehicles lined up
11 along there, a retention pond there, and also a
12 automobile crusher located right there, which is,
13 again, in this photo, which would be the lower
14 right-hand area of the photo.

15 Q Now, this particular corner of the salvage
16 property, I think you mentioned when you first
17 arrived, uh, on the property you had concentrated
18 on this area; is that -- is that a correct
19 statement?

20 A That's correct.

21 Q Can you tell the jury why? What you saw?

22 A I was sent down to this area, and there was a staging
23 right -- oh, somewhere right in this area, uh, law
24 enforcement vehicles, uh, like I said, what could be
25 considered a checkpoint. Um, beyond that is where I

1 was told that, um, Teresa's RAV 4 vehicle had been
2 found, and I was pointed to an area right there.
3 There's a -- a red vehicle right there that's offset
4 from the other line of vehicles, and the RAV 4 was
5 located right in that area, and in this photograph it
6 is not there. It had been removed already.

7 Q The last exhibit, um, I think that I've given you
8 so far, is Exhibit No. 18, and you talked about a
9 command post. I show you Exhibit No. 18, and
10 tell the jury what we're looking at, please?

11 A This is Avery Road that I'm pointing to right now
12 starting in the, uh, lower right-hand corner on this
13 photograph. And as you reach where the command post
14 was, which was right there, and right here there's
15 some command post vehicles, is the northeast corner
16 of the Avery Salvage Yard. Um, I mentioned some of
17 the -- the, uh, buildings here. This is the office
18 and shop area to the Avery Salvage Yard. This big,
19 red building is another work --

20 Q I can zoom out a little bit. I'm sorry.

21 A -- work area, I think, associated with the, um,
22 impound area. The old shop and service area, I
23 believe, and then right in here is, uh, Al and
24 Delores' house, and I can't quite see it in here,
25 but, uh, Chuck Avery's house is right in there.

1 Q Now, I know that you, uh, at least briefly,
2 talked about a command center or a command post.
3 Um, let me just skip ahead so that the jury knows
4 where we're going. How long was it that law
5 enforcement had control of this 40-acre property?
6 A Well, beginning on -- on, uh, November 5 at
7 approximately 11 a.m., uh, law enforcement offer --
8 or arrived on that property, uh, in response to a
9 call that Teresa Halbach's vehicle may have been
10 found there, and from that point on, through
11 approximately 11:30 on Saturday, November 12, uh, we
12 maintained a presence and held that property.
13 Q So a full week?
14 A Yes.
15 Q Within the, um, pit area, I guess, the -- what
16 would be to the, um, south and west of the
17 command center, um, you may notice some vehicles.
18 Can you describe those vehicles for us, please?
19 And, by the way, what exhibit is it that you're
20 looking at?
21 A I'm currently looking at Exhibit 19.
22 Q And is what's up on the screen a, uh, depiction
23 of Exhibit 19?
24 A Yes, it is.
25 Q Tell us what that is, please?

1 A Basically, we -- uh, we're looking toward the
2 southwest, um, from the, um, north side of the
3 property. And as I mentioned, uh, the salvage area,
4 or the -- the junkyard area, goes down into a pit, so
5 we're standing up on the elevation part, I believe,
6 to the rear of -- and I'm not positive -- but to the
7 rear of, or the south of, uh, the Dassey residence,
8 or, uh, Steve Avery's residence, looking out over the
9 salvage yard, and the -- and the vehicles you see in
10 the picture are, essentially, um, many of the, uh,
11 salvaged vehicles in that pit area.

12 Q Through your seven days of, um, contact with that
13 residence, uh, did you come to determine how many
14 junked vehicles were on that property?

15 A Yes. There were approximately 4,000 vehicles on that
16 property or on that salvage yard.

17 Q All right. You said that, um -- that this
18 particular property, and -- and I don't expect
19 any of these, uh, out-of-town jurors to know
20 this, but, uh, the entry to this property is on a
21 county road, a Highway 147; is that right?

22 A A state highway. Highway 147. Yes.

23 Q I'm showing you now what's been marked as Exhibit
24 No. 20. Can you tell us what that is, please?

25 A That's a sign for the Avery Auto Salvage and Towing,

1 and that is located at the, uh, north end of Avery
2 Road where it intersects with, uh, State Highway 147.

3 Q Exhibit 20 is really just the business sign that
4 directs patrons into that salvage area; is that
5 right?

6 A That's correct.

7 Q Now, Agent Fassbender, your original, um, contact
8 with that location you said was at the, uh,
9 request of, um, Sheriff Pagel, the sheriff from
10 Calumet County; is that right?

11 A Yes, that's right.

12 Q At about what time -- Um, perhaps you answered
13 this, but at about what time did you arrive at
14 that scene?

15 A Shortly after 2 p.m.

16 Q And about that time, or shortly thereafter, did
17 you agree to become one of the lead investigators
18 in this case?

19 A Yes.

20 Q And, again, shortly after 2 p.m., did you and
21 other law enforcement officers become actively
22 involved in securing or applying for what's known
23 as a search warrant?

24 A Yes.

25 Q Tell the jury what a search warrant is, please?

1 A Essentially, a search warrant is an order, uh, signed
2 by a judge, based on probable cause that directs law
3 enforcement to search a person, object, uh, place,
4 uh, and to seize, uh, property or items of property.

5 It's based on probable cause that a
6 crime may have been committed. Uh, along with
7 that, uh, the date that it's issued to the date
8 that it's, uh, executed, uh, you have five days
9 to do that, and you have 48 hours to return the
10 search warrant. Basically, that's returning it
11 to the Clerk of Courts, or the Court, with a --
12 an inventory of what was seized if anything.

13 Q The judicial authorization, that is, the, um --
14 the fact that a judge authorizes you to search,
15 uh, either a place, uh, or buildings, or
16 residences, or even persons, um, did you believe
17 that that was required or necessary before, uh,
18 you folks went any further that day? That is, on
19 the 5th?

20 A Yes.

21 Q You said that upon your arrival, um, you had
22 observed some items or some property that had
23 been previously discovered by some citizen
24 searchers; is that right?

25 A That's correct.

1 Q Describe that for the jury, please?

2 A The item was a -- a 1999, uh, RAV 4. It was

3 bluish/green in color, and, um, the citizen searchers

4 had located it on the Avery property, and had

5 contacted law enforcement, uh, reporting that they

6 may have located, uh, Teresa Halbach's vehicle.

7 Q I'm going to show you three exhibits. First, uh,

8 Exhibit No. 21, larger picture of that, can you

9 tell us what we're looking at, please?

10 A That is the, uh, rear of that vehicle I just

11 described, a Toyota RAV 4, 1999, bluish/green in

12 color, and that is the condition that that vehicle,

13 or the rear of the vehicle, the condition of that

14 vehicle, uh, as it was found.

15 Q And does that look the same or similar as when

16 you saw it shortly after 2 p.m. on the 5th of

17 November?

18 A Yes.

19 Q And, by the way, just so this jury is aware, uh,

20 had that vehicle been secured? That is, did law

21 enforcement officers, who arrived on the scene

22 prior to your arrival, make sure that nobody had

23 entered or tampered with that vehicle?

24 A Yes.

25 Q The vehicle, at least Exhibit No., uh, 23, as we

1 see it -- excuse me, 21, as we see it, appears to
2 be obscured by, um -- at least at the back of
3 it -- by some branches. Uh, could you describe
4 that further? Did it appear to be intentionally
5 concealed in your opinion?

6 A Absolutely. Uh, tree branches, posts, fence posts,
7 boxes, plywood, auto parts.

8 Q All right. Let's move on, then, to Exhibit No.
9 22, the side of the vehicle. Tell us what we're
10 looking at here, please?

11 A This is the passenger side of that vehicle. Uh, uh,
12 you can see to the -- the rear of the vehicle is that
13 red vehicle I was talking about that the RAV 4 was,
14 uh, positioned next to. Um, as you can see, it's got
15 tinted windows in the back. Uh, there's a vehicle
16 hood leaned up against, uh, the RAV 4.

17 You can see branches. Even in the, uh,
18 lower right-hand corner is a piece of the, uh,
19 particle board or plywood I was talking about.
20 Uh, and on top of the vehicle you can see that
21 branches, uh, were placed on the top of the
22 vehicle also.

23 Q And, finally, I'm going to show you Exhibit No.
24 23. Tell us what we're looking at here, please?

25 A That's a photograph of the same vehicle. The RAV 4.

1 Uh, the passenger side front corner facing that
2 direction. Again, uh, it's a good picture to show,
3 uh, the objects that were used to -- in an attempt to
4 conceal the vehicle. Uh, brush, branches, uh, posts
5 fencing, plywood. There's actually a -- a box on the
6 hood somewhere in there, too. Um, and the -- and
7 the, uh -- toward the rear of the passenger side you
8 can see the vehicle hood, uh, leaning up against
9 the -- the RAV 4.

10 Q If you would be so kind as to take the laser
11 pointer, the larger image, show that vehicle hood
12 that we're talking about?

13 A On the left side of the photograph here, um, that I'm
14 pointing to right now, is that vehicle hood lean --
15 leaning up against the, uh, passenger rear quarter
16 panel area of the RAV 4.

17 Q Do you know what that vehicle hood's made out of?

18 A Metal. Steel.

19 Q All right. Have I had other exhibits provided to
20 you? Are there other exhibits that were
21 provided?

22 A Yes.

23 Q Could you tell me what they are, please?
24 Twenty-four?

25 A What's been marked as Exhibit 24 is a, uh -- another

1 photograph of, uh, the 1999 Toyota RAV 4. Uh, it's
2 more at or around dusk. Getting dark out. Again, it
3 still has the, um, debris, um, that was put on and
4 stacked up by the, uh, RAV 4, and, also, there was --
5 or shows, uh, some individuals in the scene, some law
6 enforcement officers in the scene.

7 Q All right. In this picture, as well, is the
8 steel, um, vehicle hood, uh, in front of a
9 gentleman I think that the jury will learn is
10 John Ertl. Can you first point to Mr. Ertl from
11 the Crime Lab, and then, again, describe that
12 vehicle hood?

13 A Uh, Mr. Ertl's standing right there in the, uh,
14 coveralls. Uh, he's from Wisconsin State Crime Lab.
15 They had been called to the scene to assist in
16 processing, uh, or seizing evidence, and that the
17 vehicle hood is -- is to his left and in front of him
18 right there leaning up, again -- against the Toyota
19 RAV 4.

20 Q Before we go any further, uh, Agent Fassbender,
21 we've brought into the court, uh, what's been
22 marked as Exhibit No. 26. Can you tell us what
23 that is, please?

24 A Exhibit 26 is that vehicle hood that I've pointed out
25 in the photographs, uh, leaning up against the, uh,

1 rear quarter panel -- passenger rear quarter panel of
2 the RAV 4.

3 Q Have you picked up, or with the assistance of
4 others, attempted to manipulate that particular
5 piece of steel?

6 A Yes.

7 Q Uh, in your opinion, um, would that take more
8 than one individual to, uh, at least
9 appropriately, move it from one area to another?

10 A Yes.

11 Q I'm showing you, also, what's been marked as
12 Exhibit No. 25. Tell us what that is, please?

13 A Exhibit 25 is another photograph of, uh, the RAV 4
14 and its location. Where it was found. This
15 photograph is taken looking, uh, at the rear
16 passenger corner of the vehicle. Clearly, again,
17 showing, and I'll point out, the vehicle hood, uh,
18 what appears to be a fence post next to the vehicle
19 hood, and branches, uh, concealing the vehicle.

20 Q If I can go back just a -- a moment, please, to
21 Exhibit No. 24, uh, we see Mr. Ertl, yourself,
22 couple of other individuals in that -- in that
23 depiction, um, and you mention this was right
24 around dusk; is that right?

25 A Yes.

1 Q What's the significance, if any, of Exhibit No.
2 24? In other words, what is happening just prior
3 to and just after this photograph was taken? I'm
4 going to ask it a -- a -- different way because
5 that -- I know that that was a bad question. I'm
6 sorry. Uh, was this vehicle, um, completely
7 processed at the scene or was a decision made to
8 remove the vehicle from this location?

9 A The decision was made in conjunction with, uh, the
10 forensic scientists from the Crime Laboratory that we
11 would move the vehicle from the scene. Um, one,
12 uh -- Some factors that entered into that decision,
13 obviously, was, uh, darkness, uh, coming upon the
14 scene, and inclement weather also having already
15 happened, and, uh, more inclement weather being
16 predicted, so the vehicle was, uh, removed from the
17 scene and -- and transported to the Crime Laboratory
18 in Madison.

19 Q Could you tell the jury, please, how the vehicle
20 was removed from the scene?

21 A Well, first, the Crime Lab personnel that were at the
22 scene, uh, processed and examined the items that, uh,
23 were used to conceal the vehicle, um, to determine
24 whether they felt it had any evidentiary value.

25 Certain items were seized and

1 transported with the vehicle, such as the vehicle
2 hood there. Um, at that time a wrecker service
3 was contacted, as well as a transport service,
4 Rabas, uh -- Rabas, R-a-b-a-s, I believe, came
5 and, uh -- with their wreckers, and they removed
6 the vehicle from its location and brought it out
7 by where we had seen the vehicle crusher. At
8 that location Pethan, uh, Transport was located
9 with an enclosed trailer and the RAV 4 was backed
10 into that enclosed trailer and sealed, and then,
11 um, transported to the Wisconsin State Crime
12 Laboratory in Madison, Wisconsin along with -- or
13 in the accompaniment of the two forensic
14 scientists that were on the scene.

15 Q Just prior to the removal of the vehicle, uh,
16 were there any other resources that were called
17 in, uh, to search, uh, at least around that
18 particular RAV 4?

19 A Yes, there was.

20 Q Describe that for us, please?

21 A Um, we utilized, uh, Great Lakes Search and Rescue,
22 which is, uh, basically, uh, search dogs, and they
23 came to the scene. And one dog, in particular, was
24 utilized, uh, in that area, that south, uh, east area
25 of the yard, salvage yard, uh, commencing at around

1 the crusher area.

2 The dog was used to, um, see if it would
3 alert on the crusher. You know, this dog I'm
4 talking about is a dog that would alert. They
5 called them cadaver dogs, and they will alert on,
6 uh, uh, deceased human bodies as well as human
7 blood. And, uh, that dog was utilized to search
8 that area to the south and then along that south
9 line to the -- or past the Toyota RAV 4.

10 Q I'm showing you Exhibit No. 27. This is a woman
11 named Julie Cramer and a dog named Brutus. Do
12 you recognize them?

13 A Yes.

14 Q Tell us, who are Julie and Brutus?

15 A They're members of the Great Lur -- Great Lakes
16 Search and Rescue, and, uh, Julie is the handler of
17 Brutus. Brutus is one of those dogs I just
18 mentioned. And they are the two that searched the
19 area I just talked about.

20 Q Now, were you present when the K-9 handler, that
21 is, the human remains handler, Julie Cramer and
22 Brutus searched the area of Teresa Halbach's RAV
23 4?

24 A Yes, I was.

25 Q Describe your observations for the jury, please?

1 A Well, as we were going down that line of cars on the,
2 uh, south berm of that property that I had pointed
3 out, um -- Actually, prior to that, Julie had
4 explained what would happen if Brutus alerted on, uh,
5 an area that may contain human remains or blood, and
6 as they were going down that area or that, uh, line,
7 and when they reached the RAV 4, Brutus clearly, at
8 least to my observations, alerted on that -- that
9 vehicle.

10 Q And just so the jury's clear, uh, after Brutus,
11 the human remains dog, alerted on the RAV 4, uh,
12 it was at that time that the Crime Lab removed
13 the vehicle? In other words, that it was secured
14 and removed from that location; is that right?

15 A The vehicle was -- was in a secured state to begin
16 with and maintained. It was maintained in that
17 state. Um, the Crime Lab arrived just after Brutus
18 alerted on that vehicle, and the vehicle was
19 maintained there for probably another two hours, uh,
20 until we could get the resources at the scene to
21 remove the vehicle. So it was about two hours and
22 then it was removed, yes.

23 Q All right. Do you know if the vehicle was locked
24 at the scene?

25 A Yes. It was.

1 Q Are there any other exhibits up there that you
2 haven't identified yet?

3 A No, sir.

4 Q I just need to ask that every once in a while.
5 Mr. Fassbender, we're showing you what's been
6 marked for identification as Exhibit No. 28.
7 Could you tell us what that is, please?

8 A This is a photograph of the southeast portion of the
9 Avery Salvage Yard, and I think, more particularly,
10 depicting the automobile crusher, and I'll use the
11 pointer on the big screen.

12 Um, I'm pointing at that right now.
13 Large, uh, orange-ish/yellow piece of machinery.
14 Uh, you'll notice right near there is another
15 piece of machinery moving what appears to be a
16 crushed vehicle. Um, that happened when all
17 those crushed vehicles to the south of that
18 crusher were examined and moved to the north side
19 of the crusher.

20 Q If you just point to Exhibit 28 again and show us
21 where the crushed vehicles, that is, after the
22 vehicles were put in the crusher, where were they
23 stored or kept, at least temporarily, on the
24 Avery property?

25 A Pointing at the crusher right now, the -- the, uh,

1 orange-ish/yellow piece of machinery, just to the
2 right of that on the photograph, or to the south of
3 that, is where approximately 50-plus crushed vehicles
4 were located.

5 Q And if you could show the jury, please, where
6 Teresa Halbach's vehicle was discovered in
7 relation to that car crusher?

8 A Teresa's vehicle would have been up in this area on
9 the south edge of the salvage yard, on the other side
10 of the retention pond, and I'm pointing to an area
11 toward the middle right of the photograph.

12 Q Now, do you know about how far that, uh, vehicle
13 was -- that is, Teresa's vehicle -- was from the
14 car crusher?

15 A It was about 350 feet.

16 Q And at least from the intact vehicles, that is,
17 the noncrushed vehicles, was Teresa Halbach's
18 vehicle in a row or in a line of vehicles closest
19 to the car crusher? Does that question make
20 sense?

21 A Uh, Teresa Halbach's vehicle was in a line of
22 vehicles, that it was very near the car crusher and
23 it had access to the car crusher.

24 Q All right. Let's talk about the crusher, itself,
25 Exhibit No. 29. Tell us what that is, please?

1 A That's a photograph of the car crusher that we just
2 saw, which is located in that southeast, uh, corner
3 of the Avery Salvage Yard. To the, uh, left of the
4 car crusher, which I'm pointing out right now, to the
5 left of that car crusher, or the north, is, um, the
6 crushed cars. Originally, they were to the south,
7 but when we examined each and every car, crushed car,
8 they were then placed, uh, in this area to the north
9 of the car crusher.

10 Q Before we move forward, tell the jury why it was
11 that you examined and looked in, in those first
12 two days of the search, why you examined every
13 one of those crushed cars?

14 A We were looking for Teresa.

15 Q And at that point, at least on Saturday, Sunday,
16 and Monday, uh, you hadn't found her body yet; is
17 that correct?

18 A That's correct.

19 Q Before we move too far, I'm showing you Exhibit
20 32. Might give us a better perspective. Can you
21 tell us what that is, please?

22 A Again, 32 is a -- an aerial photograph, uh, showing
23 the southeast corner of the, um, Avery Salvage Yard.
24 Uh, and on the screen there's a big box in the lower
25 right-hand corner that's titled, "vehicle crusher".

1 That's where the vehicle crusher was located. And
2 then approximately 350, 60 feet to the southwest is a
3 smaller box, where I'm pointing right now, that has a
4 title "RAV 4 location", and that's where Teresa's
5 vehicle was located.

6 Q Can you point to that line of cars? You talked
7 about a line of cars that looked like it was
8 close to or waiting to be crushed? Is that a
9 fair characterization?

10 A Along the left side of the photograph, I'm pointing
11 to a line of cars, which is basically the south edge
12 of the Avery Salvage Yard, and that is right there,
13 and Teresa's vehicle was located in amongst that line
14 of cars.

15 Q You said after the crusher crushed the cars, they
16 were in a -- a crushed state. Um, I'm going to
17 show you what's been marked as Exhibit No. 30.
18 Tell us what that is, please?

19 A That is that, uh, crushed state that, uh, you just
20 mentioned. Often, uh, the way my understanding --
21 and I'm not an expert on this -- when they crush the
22 cars, uh, they would place more than one vehicle in
23 that crusher. They crushed three, four vehicles at a
24 time and make somewhat of a sandwich of, uh, several
25 vehicles. So what you're looking at there is, uh,

1 several vehicles crushed into one, um, item,
2 essentially.

3 Q All right. I'm going to ask you a bit of a
4 hypothetical, and if you don't feel that you can
5 comment or express an opinion about this, um,
6 then please tell us that, but if Teresa Halbach's
7 vehicle would have ended up in the middle of one
8 of these sandwiches, uh, would it have been
9 easily identified or located?

10 A Well, it would have been very difficult to locate.

11 Q I showed you a couple of other aerial
12 photographs, and I want to show you Exhibit No.
13 33 before going too far. It's going to give the
14 jury a little better understanding or overview of
15 the area. Can you tell us what we're looking at,
16 please?

17 A This is an aerial photograph from more of a distance.
18 Uh, right in the center of the photograph,
19 essentially, is the Avery Salvage Yard that we've
20 been talking about and showing previously.

21 Uh, to the left side of the photograph,
22 or the upper left corner, is a highway. That's
23 Highway 147. And then Avery Road right here, uh,
24 on the left side of the photograph, and going
25 toward the right, or toward the south, that's

1 Avery Road, and into the auto salvage yard.

2 To the south, or the lower side portion
3 of the au -- salvage yard, is a quarry, gravel
4 pit quarry, uh, owned by Radandt. To the south
5 of the Avery Salvage Yard that I'm pointing to
6 right now, or to the right of the Avery Salvage
7 Yard, is also a quarry owned by Radandt.

8 To the east of the salvage yard is open
9 field. To the northeast of the salvage yard is
10 another quarry owned by Michels, and to the north
11 of the Avery Salvage Yard, again, is -- is, uh,
12 open field and farm field.

13 ATTORNEY KRATZ: If I may, Your Honor, I
14 am about to shift topics into more specific
15 searches. I'm going to suggest this might be a
16 good time for our afternoon break.

17 THE COURT: Okay. Uh, we'll take a
18 15-minute break, ladies and gentlemen. Uh, just so
19 the jury knows, today we'll go until 5:00. Usually,
20 it's 4:30. There's some give and take in that
21 depending upon where the lawyers are with the
22 various witnesses. All right.

23 (Jurors out at 2:37 p.m.)

24 THE COURT: Mr. Fremgen, do you still want
25 to be heard on that objection?

1 ATTORNEY FREMGEN: Judge, my -- my
2 objection was simply --

3 THE COURT: Why -- why don't you get to
4 the microphone, please. Thank you.

5 ATTORNEY FREMGEN: On, uh, No. 13, my
6 objection was simply -- I -- I -- I don't have an
7 objection with it being used as a demonstrative aid.
8 I just don't think it should be received as evidence
9 since there was something similar to, purchased
10 later with, uh, the detective or the agent
11 afterwards to find something that looked like the
12 jeans. I -- No problem with the State's use of it
13 as a demonstrative aid. But, again, I just don't
14 think it should be received as evidence in this
15 case.

16 THE COURT: Well, my understanding is it's
17 principally being used to link up the rivets from,
18 uh -- from what was found to -- what was known to be
19 owned by the -- by the victim; is that correct?

20 ATTORNEY KRATZ: There's been no claim
21 that those are Teresa Halbach's jeans.

22 THE COURT: All right.

23 ATTORNEY KRATZ: In fact, just the
24 opposite. They're demonstrative, Judge.

25 THE COURT: Uh, uh, for that limited

1 purpose, it's going to be admitted. All right.

2 (Recess had at 2:40 p.m.)

3 (Reconvened at 3:04 p.m.)

4 THE COURT: Mr. Kratz, you may proceed.

5 ATTORNEY KRATZ: Thank you.

6 Q (By Attorney Kratz) Agent Fassbender, let's move
7 on, then, to responsibilities on the 5th of
8 November. You had mentioned earlier that a
9 search warrant was obtained and you had spoken,
10 at least to this jury, about the, um, processing,
11 recovery, and seizure of the SUV. Could you
12 describe for the jurors, please, um, what was the
13 search plan, uh, later? That is, that first day
14 on the 5th of November?

15 A Essentially, what happened after we got the search
16 warrant is we did an initial search, which sometimes
17 it's described as a, uh, protective sweep. Law
18 enforcement, when they execute a search warrant, will
19 do a sweep of the area or buildings that they are
20 going to search to see if there's any people, or
21 dangers to, uh, law enforcement or anyone else at
22 that time.

23 In this instance, we did do that. We
24 sent out teams to do protective sweeps and to do
25 an initial search immediately, uh, to see if we

1 could find Teresa. Hopefully, find her alive.

2 So we had that initial search that was
3 followed up with dog teams. Primary purpose of
4 the dogs was to go through the salvage yard and
5 through the rows of vehicles to see if they
6 alerted on anything, but the dogs were also
7 utilized, uh, in, uh, many of the residences
8 and -- and buildings to see if they would alert
9 there.

10 After those searches were done, um, we
11 go back to the command post, and we debrief, and,
12 uh, a search -- or evidence search team was put
13 together. Uh, due to resources and personnel, we
14 had one evidence search team that we utilized,
15 uh, that evening, and that search team started
16 to -- out by searching, uh, Steven Avery's
17 trailer that evening.

18 Q I'm showing you what's been marked as Exhibit No.
19 34. Tell us what we're looking at, please?

20 A That is a photograph of Steven Avery's trailer, and
21 to the left of the trailer is his unattached garage.

22 Q In the foreground, and to the right, uh, do you
23 see a burn barrel?

24 A Yes, I do. There's a burn barrel, uh, with some
25 yellow, um, police tape around it.

1 Q We're going to hear from, uh, Special Agent
2 Heimerl, I think it's tomorrow, but, uh, sometime
3 on Tues -- excuse me, on, um, Monday, the 7th,
4 were you aware that that search or -- excuse me,
5 that that, uh, burn barrel was recovered, uh,
6 processed, and found some electronic equipment
7 inside?

8 A Yes, it was, on Monday, the 7th. November 7.

9 Q Tell us what, uh, Exhibit No. 35 is, please?

10 A It's another photograph of the front of Steven
11 Avery's residence, trailer, and then, uh, Steven
12 Avery's unattached garage. You can see the LP tank
13 in the background between the garage and trailer, and
14 a, uh, pickup truck in front of the garage.

15 Q Now, this, uh, trailer of Mr. Avery had, uh, two
16 entrance doors. Is that your understanding?

17 A That -- Two primary entrance doors, yes. There was
18 also a, uh, patio door in the back.

19 Q Or the front or what would be to the front of the
20 trailer entrance doors, are those depicted in
21 Exhibit No. 36?

22 A Yes, they are.

23 Q And is that being depicted on the large screen as
24 well?

25 A Yes.

1 Q You had mentioned the back of the trailer, um,
2 had a sliding door, or an entry, uh, location.
3 Exhibit No. 37, does that show that part of the
4 trailer as well?

5 A Yes, it does.

6 Q Now, Agent Fassbender, the, um, search of the
7 residence, itself, uh, how was that performed and
8 who was that performed by? In other words, how
9 were teams developed to do the searching, uh,
10 during this, um, process?

11 A When we're searching, uh, for evidence, uh, on
12 Saturday evening, a, uh, team was put together, and
13 this team may be a little different than the initial
14 search teams, because, uh, they're searching for
15 evidence, and if they find evidence, uh, we want them
16 to be able to process, collect, uh, prepare for
17 transport of that evidence.

18 So when we put that particular team
19 together, we're looking for officers that have
20 been trained and have experience in evidence
21 processing and collection, and that's how that
22 team ultimately got put together.

23 Q You talked about a search of the, um, and a sweep
24 of the trailer and the garage. I'm showing you
25 Exhibit 38. What is that?

1 A That's, again, a -- a viewpoint of Steven Avery's
2 trailer in the background, his unattached garage in
3 the foreground with, uh, his black truck, and we
4 would be facing west taking that picture.

5 Q Just so the jury can see, I'm going to zoom in a
6 little bit closer, um, there's a -- a dog, uh, to
7 the left of the, um, exhibit. Do you see that?

8 A Yes.

9 Q Were you aware of that dog and were you aware of
10 the demeanor of that dog?

11 A Yes, I was.

12 Q Describe that for the jury, please?

13 A The -- The occasions I had to be around that dog,
14 that dog appeared to be very ag-- aggressive.
15 Pulling on its chain, leaping against the chain,
16 barking and snarling. I -- I kept my distance.

17 Q Were you made aware -- and -- and I think we've
18 heard, um, or will hear some more about this, but
19 did that dog prevent a search area of the back of
20 Steven Avery's garage at least for a couple of
21 days of your processing?

22 A Yes, it certainly did when we had the dogs there,
23 because the dogs didn't -- weren't going to go near
24 that dog because of the aggressive nature, and as
25 well as, uh, searchers going through that area,

1 steering clear of that area.

2 Q What is Exhibit No. 39?

3 A Thirty-nine is a photograph of the front of Steven
4 Avery's unattached garage with his pickup truck
5 parked in front of that.

6 Q And, again, this garage was not only swept on the
7 5th but was later, uh, searched on Sunday, the
8 6th; is that correct?

9 A That's correct.

10 Q Were you familiar, uh, Agent Fassbender, with the
11 van that Teresa Halbach took photos of on the
12 31st?

13 A Yes.

14 Q I'm showing you what's been marked as Exhibit No.
15 40 so that we can talk about that just, uh,
16 briefly. Tell us what we're looking at, please?

17 A That is the van, maroon van. I believe a Plymouth
18 Voyager that, uh, Barb Tadych had for sale that
19 Steven had arranged for Teresa to come out and take a
20 photograph of.

21 Q And that vehicle is what would be directly in
22 front of, or, perhaps, better stated, between the
23 Avery and the Janda, slash, Dassey residence; is
24 that correct?

25 A That's correct.

1 Q In fact, as we look at Exhibit No. 41, gets a
2 better perception or perspective, at least, as
3 far as Barb's trailer; is that right?

4 A Yes.

5 Q The red trailer that we had talked about, were
6 you able to determine who that trailer had
7 belonged to?

8 A Yes.

9 Q Who is that?

10 A Who lived there or who it was owned by?

11 Q Who lived there?

12 A Uh, Steven Avery.

13 Q All right. And so the jury can, uh, see photos
14 of him, Exhibit 43, is that a picture of his
15 driver's license photograph?

16 A Yes, it is.

17 Q And, I'm sorry, that was 42. And Exhibit No. 43,
18 on the 9th, after he was booked in this case, is
19 that a picture of his booking photo?

20 A Yes, it is.

21 Q On Steven Avery's property, uh, that is, uh, to
22 the rear of his garage area, uh, were you aware
23 of any tires, uh, that were located that, uh, you
24 determined were later used to fuel, uh, a large
25 fire behind Steven's garage?

1 A Yes, there was a, uh, pile of tires.

2 Q I'm showing you Exhibit No. 31. Is that a

3 photograph of those tires?

4 A Yes. And that was located on the southwest corner

5 of, um, the yard, um, associated with the residence

6 that Steven lived in.

7 Q Agent Fassbender, the, um, search -- that is, the

8 week-long search -- of the property, um, items

9 were located. That -- that's fair, isn't it?

10 A That's fair.

11 Q Were you aware of Teresa Halbach's license plates

12 being found that week?

13 A Yes.

14 Q Do you remember where those were found?

15 A Yes, I do.

16 Q Tell us where that was, please?

17 A That was on Tuesday, um, November 8, and they were

18 found in a salvaged vehicle that was located along

19 the driveway, just to the south of the driveway,

20 going down to Mr. Dassey, Mr. Avery's residences

21 along a fence line there.

22 Q Tell us who those, uh, plates were located by?

23 A Uh, they were located by William Brandes, who was a

24 volunteer firefighter, who had been teamed up in

25 search teams with law enforcement officers, uh,

1 looking for evidentiary items such as those license
2 plates.

3 Q Let me show you Exhibit No. 44, ask us if you
4 can -- tell us what that is, please?

5 A That's a photograph, uh, of the vehicle -- station
6 wagon there, that the license plates were found in.

7 Q The license plates, themselves, were they
8 photographed inside of this vehicle?

9 A Uh, yes, they were.

10 Q Who were they photographed by?

11 A Uh, Trooper Cindy Paine.

12 Q So Wisconsin State Trooper?

13 A Uh, Wisconsin State Patrol Trooper, yes.

14 Q Exhibit No. 45, tell us what that is, please?

15 A That's the photograph of the license plates placed
16 inside that vehicle, uh, taken by Trooper Paine. Um,
17 the plates had been removed because they were folded
18 in on themselves. They had to be unfolded to
19 determine what the number of the license was, and
20 then they were just placed back in there and a
21 photograph was taken.

22 Q All right. And, finally, Exhibit No. 46, tell us
23 what this depicts, please?

24 A Forty-six is basically a relation in ship picture.
25 Uh, on the left side of the photograph shows Steven

1 Avery's residence. Next to that, to the right, is
2 the Janda/Dassey residence, and, then, a little
3 further to the right, or to the west, is an arrow
4 pointing at the vehicle that the license plates were
5 found in.

6 Q So if you're looking at this particular access
7 road, could you show us, uh, how you would walk
8 or drive down this road to get towards the --
9 either the Avery residence or the Dassey
10 residence?

11 A Well, on the picture to the right here, that is
12 the -- or to the top of the picture -- is the
13 driveway or access road going down to, uh, the
14 Janda/Dassey residence and Steven Avery residence.
15 If you keep going to the right, which would be to the
16 east, you would run into Avery Road and the entrance
17 to the salvage yard, and then Avery road to the north
18 out to State Highway 147.

19 Q I've handed you what's been marked as Exhibit No.
20 47. Could you tell us what that is, please?

21 A That's a photograph of the front, or the north side
22 of, um, Mr. Dassey's residence.

23 Q And can you tell us what's in front of -- of
24 that, um, residence?

25 A Right in front of that residence, where I'm pointing

1 right now, about in the middle of the photograph is a
2 golf cart.

3 Q I'm also going to show you Exhibit No. 51. Tell
4 us what 51 is, please?

5 A That photograph depicts that same golf cart. It's
6 blue in color with a white seat on it.

7 Q Agent Fassbender, have you ever had occasion to
8 be inside of that residence?

9 A Yes.

10 Q I'm going to direct your attention, and I know
11 I'm skipping ahead just -- just briefly, but on
12 the 1st of March, um, we heard, at least in our
13 opening remarks, about a statement that was given
14 you by the defendant, Brendan Dassey? You and
15 Investigator Wiegert? Is that correct?

16 A Correct.

17 Q Later, on the 1st of March, were you given
18 permission and, in fact, did you enter the
19 residence of Barb Janda and Brendan Dassey?

20 A Yes.

21 Q And in the Janda and Dassey residence, uh, did
22 you find any, uh, items, specifically, in the
23 bedroom of Barb Janda?

24 A Yes.

25 Q I'm going to first show you what's been marked

1 Exhibit No. 49. It's shown on the large screen.

2 Tell us what we're looking at, please?

3 ATTORNEY FREMGEN: Judge, could I have a
4 sidebar, please?

5 THE COURT: Sure.

6 (Discussion off the record.)

7 Q (By Attorney Kratz) Exhibit No. 49, and what are
8 we looking at?

9 A That is the bedroom of, um, Barb Tadych, um, in her
10 residence, and showing some closet space or storage
11 space there, and on, um, the handles of some of
12 those, um, closets or storage space we found --
13 located, uh, some -- what you would call leg irons
14 and handcuffs.

15 Q I'm going to show you what has been marked as
16 Exhibit 48. These are closeups. Do you
17 recognize Exhibit 48?

18 A Yes, I do. It's a pair of the handcuffs that were,
19 uh, taken out of, um, that bedroom.

20 Q And Exhibit No. 50. Tell us what that is?

21 A That's a pair of what we'd call leg irons, also taken
22 out of that bedroom.

23 Q Now, also on the 1st, did Mr. Dassey identify for
24 you any clothing items? Specifically, items that
25 he had worn on the 31st of October?

1 A Yes.

2 Q I show you Exhibit No. 52. Tell us what that is,
3 please?

4 A That's a jacket that we located in Mr. Dassey's
5 residence. Um, I believe it had the name of Friar
6 Tuck on it or Friar Tuck's, something like that.

7 Q And what did he tell you about this jacket?

8 A That he believed that, uh, was a jacket that he had
9 worn, uh, the night of October 31, 2005.

10 Q Exhibit 53. Tell us what that is, please?

11 A That's a pair of, uh, tennis shoes or sneakers, also
12 taken out of, uh, Mr. Dassey's residence, and, again,
13 it -- they fit the description of sneakers he said he
14 was wearing that evening.

15 Q And, finally, Exhibit No. 54. Tell us what that
16 is, please?

17 A It's a pair of blue jeans that, uh, Mr. Dassey,
18 himself, um, located, or took me to in his residence,
19 um, indicating that those are the pants that he wore
20 that evening.

21 Q On the photograph, uh, appears to depict some
22 stains on them. Do you see that? And can you
23 show us that on -- on the screen?

24 A Yes. Um, white stains on the lower right-hand pocket
25 area of the blue jeans, and also on the upper, uh,

1 left-hand pocket area of the blue jeans there's some
2 white staining.

3 Q Some stains around the, uh, bottom portions or
4 around the knees as well?

5 A Yes. Spots and stains that are white.

6 Q Now, we'll get into the statements of Mr. Dassey,
7 uh, much more detail later this week, but did
8 Mr. Dassey describe for you what those stains
9 were?

10 A Yes.

11 Q What did he tell you?

12 A He said they were bleach stains.

13 Q Did he say how those bleach stains got on his
14 jeans?

15 A Yes.

16 Q How?

17 A He said that he got them on when he was helping clean
18 up the garage floor in Steven Avery's garage, and
19 that -- because they use -- utilized some bleach to
20 clean that area.

21 Q Now, the jeans, themselves, uh, has Mr. Wiegert
22 provided you with, uh -- with those?

23 A Yes.

24 Q What is that exhibit number?

25 A Exhibit 58.

1 Q Tell us what Exhibit 58 is, please?

2 A Exhibit 58 is the pair of jeans that, uh, Brendan

3 Dassey, um, took us to in his residence on

4 February 27, 2006 and consented to us taking them.

5 Q And do those jeans still appear, as you see them

6 today here in the courtroom, to have bleach

7 stains on them?

8 A Yes, they do.

9 ATTORNEY KRATZ: What are those

10 exhibits, Mr. Wiegert, 59 and 60?

11 Q (By Attorney Kratz) We're going to show you

12 Exhibits 59 and 60. Tell us what those are,

13 please?

14 A Two sets of, um, handcuffs.

15 Q Do you know where those were retrieved from or

16 where you retrieved them from?

17 A One set of the handcuffs was retrieved from

18 Mr. Dassey and, uh, Mrs. Tadych's residence, and I

19 believe another set was, um, seized from Steven

20 Avery's residence.

21 Q Exhibit No. 61 and 62 are being handed to you

22 now. What are those?

23 A Uh, two -- two sets of, um, fur lined leg irons.

24 Q Where were those seized from?

25 A I know we took two sets of leg irons out of

1 Mr. Dassey and Mrs. Tadych's residence, and we also
2 took one set of leg irons out of Steven Avery's
3 residence.

4 Q All right. Agent Fassbender, this has been, uh,
5 agreed to by the, uh -- by the defense, but, um,
6 were you able to retrace the steps of Teresa
7 Halbach? That is, uh, where she had been prior
8 to arriving at Mr., uh, Avery's property on the
9 31st of October, and approximately when? Do you
10 recall?

11 A Yes, we were able to retrace. And I didn't
12 understand or hear the rest of the question.

13 Q If you were able to tell us, first of all, the
14 two residences that afternoon, the afternoon of
15 the 31st, that Ms. Halbach had been?

16 A Yes.

17 Q Who is that?

18 A Uh, Steven Schmitz residence and a JoEllen Zipperer
19 residence.

20 Q And at the JoEllen Zipperer residence, um, did
21 law enforcement officials receive from Mrs.
22 Zipperer, specifically, that packet of, uh,
23 information, the AutoTrader information, given to
24 her by Ms. Halbach?

25 A Yes.

1 Q I show you what's been marked as Exhibit 55.
2 Tell us what that is, please?
3 A That's an *AutoTrader* bill of sale and Auto -- a
4 current *AutoTrader Magazine*, and a, uh, "For Sale"
5 sign.
6 Q Is it your understanding that after a transaction
7 was completed between Ms., uh, Halbach and
8 whatever customer for *AutoTrader*, that she would
9 give them a bill of sale as well as the most
10 current magazine?
11 A Yes. Same thing happened with Mr. Schmitz.
12 Q All right. And the defense has also been kind
13 enough to stipulate, which means agree, to some
14 business records. I'm showing you Exhibit 56.
15 Ask if you can tell us what those business
16 records are, please?
17 A Exhibit 6 -- 56 is a copy of Cingular, um, toll
18 records, billing, uh, for, uh, the cell phone of
19 Teresa Halbach.
20 Q Okay. And are 57 the cell phone records for
21 Cellcom? That is, for Mr. Avery's cell phone on
22 the 31st of October?
23 A I believe so, but let me confirm. Yes.
24 ATTORNEY KRATZ: And, Judge, although,
25 uh, this is, perhaps, the first time this week

1 that this kind of statement, uh, will be made,
2 but, uh, I would ask that, uh, uh, defense
3 counsel, um, agree, and indicate to the Court,
4 their acceptance and approval that the, uh,
5 business records, in this case of Cingular and
6 Cellcom, be admitted without the necessity of
7 calling a custodian of the records and without
8 objection of the defense.

9 THE COURT: Mr. Fremgen?

10 ATTORNEY FREMGEN: I believe we've
11 stipulated to that already.

12 THE COURT: That's part of the stipulation.
13 All right.

14 ATTORNEY KRATZ: Thank you.

15 Q (By Attorney Kratz) Agent Fassbender, the
16 balance of the week, that is, after the 5th of
17 November, could you describe for the jury,
18 please, the, um, uh, search efforts of this
19 property? I don't mean, specifically, what days
20 and what was searched, but, uh, just give the
21 jury, if you will, since they're not going to
22 hear day by day, um, what was searched for, uh,
23 in the Avery property and the surrounding, uh,
24 property as well?

25 A As I said before, there's approximately 15 buildings

1 on the property. All the buildings were searched by
2 search teams. Um, also on the property, each and
3 every, uh, uh, vehicle of the approximate four sev --
4 four thousand vehicles were searched.

5 Uh, additional personnel were brought in
6 to assist in those searches, to include, uh,
7 Wisconsin State Patrol. Uh, on two separate days
8 60-plus troopers were brought in just for search
9 efforts.

10 Um, anywhere from 45 to 60, uh,
11 volunteer firefighters were brought in on, uh,
12 two or three days.

13 Uh, law enforcement personnel from
14 several counties were brought in, or asked to
15 come in and help. Several police departments
16 were asked to come in and help.

17 Citizen searches were done in, uh,
18 adjacent properties, not on the Avery Salvage
19 Yard.

20 Um, Winnebago County, for example,
21 brought their dive teams in, and, uh, they were
22 utilized in ponds. They were located in adjacent
23 properties, quarries. Some ponds were pumped
24 out, uh, to look through those, uh, for either
25 Teresa or evidentiary items.

1 Q The next area of inquiry I have, uh -- I'm sorry.
2 The next area I have for you, Agent Fassbender,
3 are the creation of, um, computer-generated
4 images on and around this property. First of
5 all, are you familiar with how these images were
6 created?

7 A Yes.

8 Q And could you start by generally describing for
9 the, uh, jury, uh, what these images are and what
10 they're meant to depict?

11 A These images were prepared by Tim Austin of the
12 Wisconsin State Patrol, who was asked to come
13 right -- to the scene right away on November 5. Uh,
14 he uses what's called a "total station, uh,
15 measuring" or "forensic mapping" uh, piece of
16 equipment. And with that, he's able to, uh, map or
17 measure a scene, uh, to scale, uh, so you have
18 accurate measurements of, uh, any particular scene.
19 In this case, a -- a large scene or a crime scene.

20 Um, they are meant to depict, uh,
21 measurements of items at the scene, uh,
22 relationships of items at the scene and -- and
23 the measurements between them.

24 Uh, he's also able to depict those or

1 uh, models in three dimensional, adding height --
2 a height to that, uh, sketch or that model, and
3 he's also able to, uh, render, um -- the word
4 escapes me now -- render, um, animation scenes --
5 that's what I'm thinking of -- of that same scene
6 or certain areas of that scene. And an animation
7 would be a -- a virtual tour or walk-through a
8 certain area on that scene.

9 Q Since the jury, uh, would not be and will not be
10 in this case, visiting this scene, and since
11 these images show angles or depictions that the
12 naked eye cannot, do you believe that these
13 images will assist the jury in understanding
14 relationships? That is, between relationships
15 of, uh, evidence that was not only seized but
16 also relationships of evidence, uh, to fixed
17 points within the property?

18 A Yes. Definitely.

19 Q All right. Let's show the jury -- By the way, do
20 you know about how many measurements were taken
21 by Mr. Austin?

22 A Over 4,100 measurements both manually and
23 electronically.

24 Q You talked about them being, um, accurate. Do
25 you know just how accurate these are?

1 A Well, I -- I think the greatest distance measurement
2 he had was 1,200 feet, and at that distance the
3 maximum amount of error would be less than one-half
4 inch.

5 Q Exhibit No. 63. We're going to go through these
6 very quickly. Can you tell us what we're looking
7 at, please?

8 A Sixty-three is a three-dimensional, uh, depiction of
9 the Janda/Dassey residence and the Steven Avery
10 residence in the northwest corner of the Avery
11 properties.

12 Q And if you could just take your laser pointer,
13 just show the jury, uh, what we're talking about
14 here?

15 A Again, the, um, Janda/Dassey residence, unattached
16 garage to it, the Steven Avery residence and
17 unattached garage, and the surrounding yards, and
18 that right there is the, uh, van that was for sale.

19 Q Okay. Exhibit No. 64?

20 A Um, again, 3-D rendition of essentially the same
21 section of land but from a different angle coming
22 from the north, and the, uh, Janda/Dassey residence,
23 garage, Steven Avery residence, garage, the vehicle
24 that was for sale.

25 Q Once again, these are views that are unattainable

1 by the human eye; is that correct?

2 A Yes.

3 Q Exhibit No. 65, please?

4 A It's a 3-D rendition of, uh, the Janda/Dassey
5 residence from the front, uh, looking south, and the
6 unattached garage, and the golf cart is right there.

7 Q These are not photographs, these are actual
8 computer-generated images; is that correct?

9 A Correct.

10 Q Exhibit No. 66?

11 A Another view of the Janda/Dassey residence and garage
12 from the back yard looking north now, from the south
13 looking north, um, four burn barrels in the back of
14 the, um, residence area.

15 Q Exhibit 67?

16 A Uh, another depiction of Steve Avery's residence,
17 Steven Avery's garage, the van that was for sale, and
18 then to the right side of the picture you can see
19 Steven Avery's burn barrel depicted.

20 Q Sixty-eight?

21 A A, uh, more close-up version of the depiction of
22 Steven Avery's residence, the front of the residence,
23 the deck, the, uh, entrance door to the north, and
24 then the rear entrance door to the south.

25 Q Exhibit 70?

1 A Uh, another 3-D rendition of the rear area, or to the
2 south, of Steven Avery's garage. Steven Avery's
3 garage right there, Steven Avery's residence right
4 there, and then a, uh, mound, built up mound, of dirt
5 and stone, and also a dug out portion of that mound
6 to the south of the mound, which is what we called
7 the burn area, doghouse, and the dog chain.

8 Q I'm sorry, Agent Fassbender, I misspoke. This
9 was Exhibit 69; is that correct?

10 A Exhibit 69, that's correct.

11 Q I'm sorry. And this also shows the burned out
12 van or vehicle seat in it; isn't that right?

13 A Correct. Right to the right of the darkened area,
14 which is the burn area, uh, just outside of that and
15 on the edge of the elevated dirt area is that burned,
16 uh, car seat.

17 Q All right. Now we're moving to Exhibit No. 70.
18 What is this?

19 A A different angle depicting the, uh -- the mound and
20 the burn area. The, uh, car seat, Steven Avery's
21 garage, Steven Avery's house.

22 Q Exhibit 71?

23 A 3-D, uh, rendition of, uh, the Janda/Dassey
24 residence. You would be looking from above and to
25 the east, looking west. The vehicle that was for

1 sale, I believe it was a Plymouth. Uh, the garage,
2 Steven Avery's house, and the burn area behind the
3 garage. Steven Avery's garage.

4 Q Now, Trooper Austin was also able to do interior
5 scene modeling. In other words, uh, um, rip off
6 the roof, if you will, of buildings and show you,
7 uh, a birdseye view of the inside of -- of, uh,
8 buildings; is that correct?

9 A That's correct.

10 Q I show you Exhibit No. 72. Tell us what we're
11 looking at here, please?

12 A This is where, uh, Trooper Austin made the roof, uh,
13 disappear on Steven Avery's residence, looking
14 straight down, or almost straight down, into the
15 residence to depict what the inside of the residence,
16 uh, looked like or had in it.

17 Q These included all of the rooms of the trailer?

18 A Yes.

19 Q And even to the exterior, both exterior main
20 doors, as well as the, uh, sliding glass door
21 towards the back; is that right?

22 A That's -- That's correct.

23 Q Now, some closeups, uh, as to some of those
24 rooms. Uh, one of the bedroom closeups, which
25 includes some firearms, that's Exhibit 73. Tell

1 us what we're looking at?

2 A This bedroom is the bedroom located to the rear of
3 Steven Avery's residence, or to the far south. This
4 was Steven Avery's bedroom. Um, and the firearms,
5 um, mentioned are in a gun rack on the wall, or the
6 northern wall, of that bedroom.

7 Q So that the jury understands these, um,
8 depictions, even the interior depictions, were
9 taken by detailed measurements by Trooper Austin
10 as well; is that right?

11 A That's correct.

12 Q A different view of that bedroom would be Exhibit
13 No. 74. Tell us what we're looking at, please?

14 A Same bedroom. Steven Avery's bedroom. Just a
15 different angle. Here you can see a desk in the
16 corner with a chair, and, uh, uh, a bookcase, album
17 holder, is how it's been described, along that, uh,
18 east wall of the bedroom.

19 Q And later this week we're going to hear about how
20 close Steven Avery's bedroom door is to the exit
21 door. That is, the door that goes towards the
22 garage. But could you just show us that with
23 your laser pointer?

24 A Steven Avery's -- Entrance to his bedroom right here,
25 the rear exit door/entrance door to his trailer right

1 there. Just a couple steps.

2 Q Mr. Tyson, a deputy with the Sheriff's, uh,

3 Department, tomorrow, will talk about bleach

4 being found. But can you tell us what Exhibit

5 No. 75 is?

6 A Exhibit 75 depicts the bathroom in Steven Avery's

7 trailer, which is located right next to, or to the

8 north, of his bedroom. In that bathroom area there's

9 a, uh, laundry area right up in here where this box

10 is, and a shelf. There was empty beach -- bleach

11 bottle seized off of that shelf.

12 Q The last two images, then, uh, include, uh,

13 garage images. This is Exhibit No., um, 76. Can

14 you tell us what that is, please?

15 A This is Steven Avery's garage with, um, the roof, uh,

16 disappearing and allowing us to see the inside of the

17 garage. I might add that this is more of a cleaned

18 up version of the inside of that garage. Lot of the

19 clutter -- There was much more clutter. A lot of the

20 clutter is -- is not in there.

21 Q And, finally, Exhibit No. 77. Tell us what that

22 is, please?

23 A Steven Avery's garage. Different angle. The roof

24 has been removed. The garage door is open, or

25 removed, and, um, again, the clutter not included,

1 but it is accurate, uh, rendition of the inside of
2 that garage.

3 Q Now, Evidence Tents No. 9 and 23, do you know
4 what those depict?

5 A Yes. Evidence Tent No. 9 toward the front of the
6 garage depicts where a bullet fragment, a .22 caliber
7 bullet fragment, was located in the crack in the
8 cement of the, uh -- the floor of the garage. And
9 then back here, the other evidence tent, uh, is
10 where -- 23-A is where a bullet fragment was also
11 discovered, uh, underneath a air compression in the
12 back -- air compressor in the back of that garage.

13 Q These were searches on March 1 and 2 after
14 Mr. Dassey's statement? Is that your
15 understanding?

16 A That's correct.

17 Q Agent Fassbender, you talked about an animation,
18 or that it was possible to, um, depict, or have
19 Trooper Austin depict, through animation, uh,
20 what it is that, uh, he had, um, shown in a 3-D
21 version. Have you been able to, um, view that
22 animation?

23 A Yes.

24 Q I show that to the jury at this time. Oop. I'm
25 sorry. That's the wrong animation. If you'd be

1 so kind as this plays, uh, Agent Fassbender,
2 since the jury will not get a virtual tour, or
3 will not get a tour, of the property, um, explain
4 for the jury, if you will, what they are
5 observing?

6 A Well, this would be, essentially, the aerial view of
7 Steven Avery's garage and residence. You're looking
8 west to the east, and just at the bottom of the
9 screen would be the roof to the Janda, uh, Dassey
10 residence.

11 And we're moving toward the north and
12 reducing altitude, coming around the front of the
13 Janda/Dassey residence and showing the front of
14 Steven Avery's trailer. To the right you can see
15 the van, where it was parked, uh, the van that
16 was for sale.

17 Q Use your laser pointer if you feel it's
18 necessary.

19 A The van right there. Continuing, and he -- he points
20 out the van. The front of Steven Avery's trailer.
21 To left is the garage.

22 Now, we're approaching Steven Avery's
23 trailer coming from the east headed west. You
24 can see a wraparound deck. There's also a pool
25 in the back. And that's the main entrance door

1 coming up over Steven Avery's trailer to the top
2 and looking down upon his residence.

3 The roof is gone, and now we're looking
4 into the living room of Steven Avery's trailer.
5 In the corner there's a computer desk, TV, spare
6 bedroom, bathroom, and Steven Avery's bedroom.
7 And that would be working, uh, north to south in
8 his trailer. Again, just different angles of
9 Steven Avery's bedroom.

10 Again, from an elevation looking down,
11 Steven Avery's garage, and, again, the interior
12 of the garage. There's a Suzuki Samurai parked
13 in there, and a snowmobile also placed in the
14 garage.

15 Coming around to the rear, or to the
16 south, of, uh, Steven Avery's garage is that
17 mound, built up mound, of dirt and stone I talked
18 about. The doghouse, the chain, and the dog, and
19 this dug out portion of that mound area, which
20 was the burn area, steel belts right there, the
21 car seat, burned out car seat, and a tire, which
22 were all located at the scene.

23 Just pulling away from that, toward the,
24 uh, southeast, more of a distance view of Steve's
25 garage and residence. We would be, essentially,

1 in the backyard of the, um, Janda/Dassey
2 residence right now. The four burn barrels I
3 talked about earlier, and the Janda/Dassey
4 residence. Or the Tadych, now, residence.

5 Associated with that residence were
6 these four burn barrels. You can see the
7 relationship between Steven Avery's property and
8 Mr. Dassey's property.

9 Front, or the north, of Steven
10 Avery's -- to the north of Steven Avery's trailer
11 and garage. In the forefront of the, uh,
12 rendition here is Steven Avery's burn barrel.
13 Again, the relationship between all three items,
14 the garage, the residence, and the burn barrel.

15 Q Again, those -- that was an animation, uh,
16 created from those still photographs by
17 Mr. Austin? Is that your understanding?

18 A That's correct.

19 (Exhibit No. 78 marked for identification.)

20 Q The last, uh --

21 ATTORNEY KRATZ: By the way, Judge, I
22 should have the record reflect that the, uh,
23 animation that has just been shown, uh, I am
24 having marked as -- at least for
25 identification -- as Exhibit No. 78.

1 THE COURT: Okay.

2 ATTORNEY KRATZ: Um, we'll be tendering
3 that as well.

4 Q (By Attorney Kratz) The last, uh, area of
5 inquiry I have for you, um, Agent Fassbender, uh,
6 is a statement from Mr. Dassey. Uh, although
7 we're not going to be discussing the, uh, March 1
8 or earlier statements in November, um, I
9 understand that you, individually, that is, you
10 alone, spoke to Mr. Dassey on February 27; is
11 that right?

12 A Myself and another DCI agent, uh, spoke with him, uh,
13 his mother, and his brother, who also present at that
14 time.

15 Q Where did that take place?

16 A At the, uh, resort motel in Mishicot, uh, later in
17 the evening. I think it was, uh, after 10:00 p.m.

18 Q All right. On the 27th of February -- By the
19 way, this was 2006; is that right?

20 A That's correct.

21 Q This was before the March 1 admissions were
22 obtained from Mr. Dassey; is that right?

23 A It was on the evening of February 27.

24 Q Would you agree that this was characterized as a
25 witness interview?

1 A Yes.

2 Q And at that time was the topic of any bleach or
3 bleach stains brought up?

4 A Yes, it was.

5 Q Describe for the jury how that came up, please?

6 A Well, I received information about Mr. Dassey having
7 some bleach stains on some jeans, and that being a
8 result of, uh, cleaning Steven Avery's garage floor.
9 Acting on that information, I went to the motel where
10 Mr. Dassey's mother and his brother were located, and
11 I inquired about that, and Mr. Dassey advised that,
12 uh, yes, he had some jeans that he was wearing that
13 evening, October 31, 2005, uh, when he was assisting
14 Steve Avery in cleaning up a garage -- Steve Avery's
15 garage floor, because it had some stains on it.

16 Uh, when asked what he thought he was
17 cleaning up, uh, and the color of those stains,
18 he described them initially as dark red, uh, but
19 he believed, um, that they were oil stains, uh,
20 from some vehicles or such.

21 Uh, upon further speaking with him, uh,
22 he described the stains as red in color, because
23 the rags or the cloths they were using to clean
24 up the stains appeared red on the cloths.

25 When asked what he used to clean up the

1 stains, he advised that they initially tried
2 gasoline. Um, that worked a little, and then
3 they used paint thinner, uh, and that may have
4 worked a little more he thought, and, then,
5 ultimately, they used bleach on the garage floor,
6 uh, to finish the cleanup.

7 He said that the rags they used to clean
8 up the substance Steven threw in the, uh, fire
9 that was going, um, behind -- in a burn area
10 behind Steven Avery's garage.

11 And, again, when asked, um, about what
12 he thought the substance was, if he thought it
13 could have been blood, and he said, yeah, he
14 thought it could have been blood, and said, when
15 asked what do you think to this date, which would
16 have been February 27, he believed it to be
17 blood.

18 Q And so the jury understands, and I know that
19 later in the week we'll hear of this, but that
20 Mar -- that, uh, February 27 statement, then,
21 caused you and Investigator Wiegert to
22 re-interview Mr. Dassey two days later on the 1st
23 of March; is that correct?

24 A That was one of the things.

25 ATTORNEY KRATZ: At this time, Judge, I

1 will move the admission of Exhibits 15 through
2 78, and have no further questions of this witness
3 at this time. Thank you.

4 THE COURT: Any objection, Counsel?

5 ATTORNEY FREMGEN: I think just as to 78,
6 there might be a second item on that that hasn't
7 been -- just that first overview that we saw?

8 ATTORNEY KRATZ: There is a second, uh,
9 animation, Judge, and if that is played, uh, that
10 will, uh, be identified and, uh, described through
11 our anthropologist, Dr. Eisenberg, later this week.
12 But I'm not offering it at this time.

13 THE COURT: You -- You're offering the part
14 of 78 that we've seen, which is the virtual tour?

15 ATTORNEY KRATZ: Just the scene model, yes,
16 Judge.

17 ATTORNEY FREMGEN: With that, no objection.

18 THE COURT: All right. They're received.
19 They'll be received then. Cross?

20 ATTORNEY EDELSTEIN: Thank you, Your
21 Honor.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY EDELSTEIN:

24 Q Agent Fassbender, uh, how long have you been
25 employed with DCI?

1 A Twenty-two years about.

2 Q And prior to that, you were also a state
3 employee, uh, as -- as a trooper; is that
4 correct?

5 A For five years, yes.

6 Q Or state patrol? However you want to
7 characterize it?

8 A Correct.

9 Q Okay. Now, is it fair to say that from the
10 perspective of who's in charge of this overall
11 investigation, that became yourself as well as
12 Wiegert from Calumet County; correct?

13 A That's correct.

14 Q Prior to getting the phone call, as you indicated
15 in your direct, from your superior, you really
16 didn't have much information about this incident;
17 is that right?

18 A That's correct. Just from the media.

19 Q Now, early on, you testified that by the time you
20 arrived at the Avery property, quote, law
21 enforcement had control of the property. Is that
22 your understanding?

23 A Yes.

24 Q And what time did you get there?

25 A Sh -- shortly after 2 p.m.

1 Q And on what day?

2 A Saturday, November 5, 2005.

3 Q Now, prior to that, law enforcement didn't

4 necessarily have control of the property;

5 correct?

6 A That's correct.

7 Q In fact, there were individuals, who were

8 citizens, who were kind of traipsing around

9 there?

10 A Yes.

11 Q Okay. And they were looking for any signs

12 connected to Teresa? Is that a fair statement?

13 A To my knowledge, yes, two -- two citizens went to

14 that salvage yard to obtain permission to look

15 through it. Yes.

16 Q Okay. And, in fact, they got permission from

17 members of the Avery family; correct?

18 A Yes. Earl Avery.

19 Q Who asked you to become, as you testified, the

20 lead investigator?

21 A I believe Sheriff Jerry Pagel. Calumet County

22 Sheriff.

23 Q As you understood it, when you arrived and made

24 your way down there by the RAV 4, which I believe

25 was depicted in Exhibit No. 23, uh, no one had

1 been inside of the vehicle; correct?

2 A No. The vehicle was found in a locked condition.

3 Q So somebody tried to get in?

4 A I don't understand that. Not to my knowledge no one

5 tried to get in.

6 Q How do you know it was locked? Somebody would

7 have to check a door, would they not, to see if

8 it was locked? You testified it's locked. How

9 do you know that?

10 A Uh, one of the Sturms, with one of the citizens, that

11 went on the property to look, um, used a tissue to

12 try the door handles, yes.

13 Q Okay. So somebody did try to get in?

14 A Yes. I -- I took it to mean an apparent effort to --

15 that was physically visible. I'm sorry. I

16 misunderstood the question.

17 Q And we've seen the photographs of what the RAV 4

18 looked like when it was found. Um, who, if you

19 know, was there guarding or securing the RAV 4

20 when you showed up around two o'clock?

21 A I'm not sure who was guarding the RAV 4 at that time.

22 To my knowledge --

23 Q You indicated -- Go ahead.

24 THE COURT: Well, let him finish.

25 A My knowledge was that Calumet Cou -- or, uh,

1 Manitowoc County Deputies initially did that, and
2 then when Calumet County personnel got there, uh,
3 they took over. But I'm not sure of the exact time
4 that the Calumet County Deputy took over. I believe
5 it was somewhere around -- between two and three,
6 three-thirty.

7 Q (By Attorney Edelstein) But you don't have a
8 specific recollection of whether it was Calumet,
9 or Manitowoc, or who was standing there when you
10 got there; is that what you're telling us?

11 A That's correct.

12 Q All right. Now, you indicated that prior to
13 anything happening with the RAV 4, the lab
14 people -- And we're talking about your folks from
15 your agency from Madison were called; right?

16 A Yes.

17 Q And they showed up; correct?

18 A Correct.

19 Q And I believe you testified that the items around
20 the RAV 4, which you described as having been
21 used to conceal it, were processed; correct?

22 A Examined might be a better term. Processed.

23 Q Well, let -- let's -- Was it a visual examination
24 only, to your knowledge?

25 A That's correct.

1 Q So there were no forensic tests made at that time
2 at that location?

3 A Not to my knowledge.

4 Q Were you present from the time that you got there
5 and saw what was the secured, or should have been
6 the secured, RAV 4, until the time the vehicle
7 was physically loaded up into the enclosed
8 trailer?

9 A I was not present at the RAV 4, no. I was on scene,
10 but I was not present at the RAV 4.

11 Q All right. So if the -- if the lab personnel did
12 anything beyond a visual inspection, you weren't
13 there to see it?

14 A That's correct.

15 Q But as lead investigator, you keep up with the
16 things that the lab people do in the course of
17 the investigation?

18 A I try to, yes.

19 Q Well, that's kind of important, isn't it?

20 A Yes.

21 Q In fact, a lot of times you have the -- in
22 conjunction with others involved, the authority
23 to make specific requests of the lab for
24 processing for evidentiary items?

25 A Correct.

1 ATTORNEY EDELSTEIN: Your Honor, may I
2 approach?

3 (No verbal response.)

4 Q (By Attorney Edelstein) Agent, with respect to
5 Exhibit No. 26, you saw it paraded in here
6 earlier by two different law enforcement
7 officers; right?

8 A Yes.

9 Q And this is what you describe as the hood that
10 was laying up against the RAV 4?

11 A Yes.

12 Q And I believe you testified in response to
13 Mr. Kratz's inquiry that it was pretty heavy?

14 A Yes.

15 Q And would -- you -- in your opinion, you thought
16 it would take two people to move it?

17 A Two people to easily manage it I think is how he'd
18 asked the question. Not just move it, but how to
19 properly or easily manage it.

20 Q Okay. So you're not suggesting to this jury that
21 one person would be unable to move this about?

22 A No, I'm not.

23 Q Have you ever picked it up?

24 A Couple days ago. Last week, I believe, I tried to
25 pick it up and I can lift it.

1 Q Okay. Would it surprise you if I said I could
2 lift it?

3 A If you can get your arms around it, no, it wouldn't.

4 Q Okay. You got a little bigger wing --

5 A Yes.

6 Q -- span than I do?

7 A Yes.

8 Q All right. So you -- to the extent that one
9 individual in otherwise relatively good health
10 could move it, you wouldn't take argument with
11 that, would you?

12 A No.

13 Q Okay. You never weighed that, did you?

14 A No, I haven't.

15 Q Never asked the lab to weigh it, did you?

16 A I didn't ask them to weigh it. I don't know if they
17 did.

18 Q Did you ask them? I'm sorry.

19 A I did not ask them to weigh it.

20 Q But it was taken to the lab?

21 A They took it with the RAV 4. Yes.

22 Q And do you know, as part of your investigation in
23 this case, being the lead investigator, there are
24 no fingerprints on that that match Brendan
25 Dassey; correct?

1 A Correct.

2 Q You also know that there's no fluids of any type,
3 no tissue of any type, no fibers of any type,
4 that are connected to Brendan Dassey; right?

5 A Related to that hood?

6 Q Yes, sir.

7 A Correct.

8 Q Let's go back for a second here to the RAV 4.
9 When you first got there, um, it's your
10 understanding the vehicle was locked; right?

11 A Yes.

12 Q And the purpose of having all these -- these
13 people there involved in this -- And you
14 described this as -- as starting off as a, uh,
15 missing persons type case; correct?

16 A Yes.

17 Q Was there a reason why the RAV 4 was not opened
18 at that point if you're looking for someone who
19 you're hoping is still alive?

20 A Because, uh, law enforcement officers looked in the
21 windows of the RAV 4 and did not see Teresa in the
22 vehicle.

23 Q Now, during the course of your direct exam, you
24 described from the aerial photographs a line of
25 vehicles, and you testified that those were,

1 quote, cars waiting to be crushed; right? You
2 remember that?

3 A I remember that question being asked. I didn't
4 necessarily agree that they were waiting to be
5 crushed, but there's a line of vehicles along the
6 back of the property.

7 Q All right. So you don't have an opinion as to
8 what the status of any of the particular vehicles
9 of the 4,000 found on the property may have been
10 on any given date during that seven-day period of
11 time that police controlled the property?

12 A With the exception of maybe some vehicles that were
13 being prepared to be crushed, uh, like in the shop,
14 or around the shop where they're getting items
15 removed so they can be crushed, like gas tanks, or
16 whatever it has to be removed from a vehicle.

17 Q Okay. And -- and you are aware that in this type
18 of business certain items do have to be removed
19 before they would properly be placed into the
20 crusher, including things that hold fluids? For
21 example, gasoline tanks?

22 A Properly, yes.

23 Q Now, you testified, and correct me if I'm wrong,
24 in response to Mr. Kratz's hypothetical, that if
25 Teresa's vehicle had ended up, shall we say, as a

1 sandwich in between other vehicles that the --
2 that had been processed through the crusher, that
3 it would have been difficult to locate the
4 vehicle. Do you remember testifying to that?

5 A Yes, I do.

6 Q Now, you've been an officer, what, 27 years or
7 so?

8 A Correct.

9 Q Okay. And when you showed us the pictures of the
10 vehicles that had, in fact, been crushed, it's
11 fair to say that it would be relatively easy to
12 identify the color of the vehicle, would it not?

13 A Potentially, yes.

14 Q And you testi -- Well, what -- what do you mean,
15 "potentially"?

16 A When I looked at that, some vehicles you could
17 clearly see the color and others maybe you couldn't.
18 I mean --

19 Q Well, you tes --

20 A -- depends on the manner that it was crushed.

21 Q Well, you testified that with the state troopers
22 and the other volunteers, be they firemen or
23 whoever, every single vehicle, including the
24 squashed or crushed vehicles, had been examined?

25 A Yes. They took them apart, they uncrushed them, each

1 vehicle, and looked at them.

2 Q Well, did they uncrush them or did they simply

3 separate them?

4 A Separated them --

5 Q Okay.

6 A -- and opened them up. If you want to call it

7 uncrushed, if you want to say separated or opened up.

8 Q Okay. So, obviously, somebody had some equipment

9 which was capable of -- let -- let's say that

10 the -- the roof had been flattened on a vehicle.

11 Somebody had equipment to either enlarge it or

12 remove it so as to be able to have a peek inside?

13 A Equipment was brought in. I know they were using the

14 Jaws of Life on occasion to do some of that work.

15 Q Okay. In addition to, uh -- And the purpose, of

16 course, of looking inside, would be to see if

17 there's any sign of human remains; correct?

18 A Correct.

19 Q Okay. But to the extent that you testified it'd

20 be difficult to locate, assuming you were able to

21 determine a particular color, there are other

22 methods by which to determine the ex--- the

23 precise existence of a given vehicle besides the

24 color; correct?

25 A Well, certainly.

1 ATTORNEY KRATZ: Judge, I'm sorry. May I
2 interpose an objection? Is he talking about a law
3 enforcement officer with Jaws of Life or some
4 citizen searcher? If he could be more specific with
5 his questions?

6 ATTORNEY EDELSTEIN: I -- I have -- I
7 can do, that, Judge.

8 THE COURT: Okay. Go ahead.

9 Q (By Attorney Edelstein) Officers have access, if
10 you will, to information to determine the, um,
11 identity of vehicles that the general public does
12 not; correct or incorrect?

13 A Well, with the internet nowadays I don't know if
14 that's necessarily true, but to -- to run identifying
15 numbers --

16 Q Correct.

17 A -- through D.O.T., yes, we can do that.

18 Q Okay. There's areas, be it on the frame, it
19 might be different locations, that are basically
20 hidden intentionally by the manufacturer to
21 assist in vehicle indication; right?

22 A Yes.

23 Q Okay. So given that, that you have the ability
24 to identify the hidden VINs, and, uh, looking at
25 colors, and do you still stand by your assertion

1 that had this vehicle been in the middle of a --
2 a crushed sandwich, so to speak, that it would
3 have been difficult to locate?

4 A My response was just a visual observation. If
5 someone was walking by or looking at those piles of
6 cars, it would be difficult to locate. That was not
7 with the understanding that I'm going to go and
8 un-sandwich the vehicles, tear them apart and dig
9 through them.

10 Q Okay. So if it was just kind of a -- Correct me
11 if I'm wrong. As I understand your testimony,
12 you're saying if somebody simply does sort of a
13 cursory walk-through, you might miss it? It
14 might be difficult to locate?

15 A I believe it would, yes.

16 Q Okay. But if somebody takes the time to actually
17 look carefully at each of the vehicles, including
18 those that might be sandwiched, um, knowing
19 things like color and age of the vehicle, it
20 probably wouldn't have been that hard?

21 A It depends on the amount of work you put in. We
22 brought a lot of equipment in and -- and tore the
23 vehicles open and apart to do that. It took almost a
24 whole day.

25 Q Now, you testified about creating these teams,

1 uh, to do things on the 5th, uh, following the --
2 the search warrant for a protective sweep;
3 correct?

4 A Yes.

5 Q Did you decide who would be on these teams?

6 A I don't believe I was involved in the teams that went
7 out and did the -- the sweeps and the search for
8 Teresa. The initial search.

9 Q Where were you when that occurred?

10 A I was with the dog and the handler down by the RAV 4,
11 and then we continued searching along that line of
12 cars, and into an area in the Radandt pit to the
13 south of the Avery property.

14 Q Going back to, I think it's 88, the hood over
15 here, did you make any observations in the
16 immediate area of the RAV 4 to determine whether
17 or not that hood came from anywhere close to that
18 location?

19 A I did not.

20 Q To your knowledge, did anyone else?

21 A I don't know.

22 Q So you cannot tell us where, if at all, that may
23 have come from before it was propped up against
24 the RAV 4?

25 A That's correct.

1 Q And so I take it, then, you have no information
2 relative to the, uh -- whether or not there were
3 any footprints in the mud leading up to the RAV 4
4 that would have shown a path from the RAV 4 to a
5 location where the hood came from?

6 A That's assuming there's mud and, um --

7 Q Well, on -- on the day that you were there, what
8 was the condition of the ground?

9 A It was dry, at least most of the day, until the
10 torrential rains started and wiped everything out.

11 Q Is it fair to say that during the course of your
12 involvement in the investigation, nobody produced
13 any type of footprints in the junkyard area that
14 connected to the shoe prints developed off the
15 pattern of Brendan Dassey's tennis shoes?

16 A There were no footwear impressions obtained.

17 Q So the answer to my question would be?

18 A No.

19 Q Thank you.

20 THE COURT: Counsel, before you go on, just
21 to correct the record, I think you identified the
22 hood as Exhibit 88? And it's really Exhibit 26.

23 ATTORNEY EDELSTEIN: I'm sorry.

24 THE COURT: It's okay.

25 Q (By Attorney Edelstein) I believe you said,

1 Mr. Fassbender, that the RAV 4 was 350 feet from
2 the crushing device?

3 A About 350. I think it was a little more than that,
4 360, 367, something like that.

5 Q Is that a number that you personally arrived at
6 or is that a number you obtained from someone
7 else?

8 A I believe that's a number obtained from Trooper
9 Austin's measurements.

10 Q Okay. Do you know, did he base that measurement
11 as the crow flies, or based upon the distance one
12 might have to travel from where it was, getting
13 around a little watery depression area over by
14 the, uh, crusher?

15 A My understand as the crow flies. My understanding is
16 as the crow flies.

17 Q Okay. Well, realistically, nobody's going to go
18 in a straight line from where the RAV 4 was over
19 to that crusher in 350 feet, would they?

20 A Correct.

21 Q So you -- when we talk proximity, then, and
22 you're talking about closeness to the -- to the
23 crusher, it really was more than the 350 feet you
24 testified to? As -- as a practical matter?

25 A If I were to walk it or drive it, it would be more

1 than that.

2 Q Okay. Agent Fassbender, you testified about
3 Exhibit 60 and 59; right? You iden --

4 A Yes.

5 Q You identified them as handcuffs?

6 A Yes.

7 Q Where did 60 come from?

8 A If those were the two that were presented to me at
9 the same time, I was unsure. I said that one pair of
10 handcuffs came out of the Da -- Dassey/Janda
11 residence and one came out of Steven Avery residence,
12 I believe.

13 Q All right. It is true, however, that neither one
14 of the exhibits, be it 59 or 60, came from the
15 bedroom area where Brendan Dassey lived or slept;
16 correct?

17 A That's true.

18 Q All right. It didn't -- Neither one of them came
19 from an area that you would characterize as his
20 area? His room?

21 A Correct.

22 Q In fact, it's more accurate to say that both of
23 them came from areas that were probably
24 controlled, or appeared to be controlled, one by
25 Steve Avery, one by his mother?

1 A Yes.

2 Q When I speak of the mother, I'm talking about

3 Brendan's mother; right?

4 A Yes.

5 Q And that's how you understood the question?

6 A That's correct.

7 Q We're not talking about Steve Avery's mother?

8 A No. I understood it to be Barb Tadych.

9 Q Okay. Again, 59 and 60, whichever one came out

10 of the Avery place, whichever one came from

11 Barb's bedroom, they went to the lab; right?

12 A The ones out of, uh, the Janda/Dassey residence I

13 don't believe went to the lab. I'm --

14 Q Well --

15 A -- not positive without seeing the paperwork or

16 records.

17 Q The ones from the Avery property, they obviously

18 went to the lab?

19 A Yes.

20 Q Not one shred of physical evidence on the

21 handcuffs from the Steve Avery property

22 connecting Brendan Dassey to those handcuffs;

23 correct or incorrect?

24 A Correct.

25 Q No fingerprints?

1 A No.

2 Q No DNA?

3 A There was DNA found on one of the sets of handcuffs
4 that was male DNA, and it excluded Teresa Halbach but
5 didn't exclude Steven Avery.

6 Q Did not, in any way, shape, or form include
7 Brendan Dassey; correct?

8 A To my knowledge, no, without looking at the -- the
9 lab report.

10 Q Okay. I realize there were a lot of evidence in
11 this case, and I'm not trying to put you on the
12 spot, but we all know it's very important and the
13 jury's entitled to know; right?

14 A Correct.

15 Q Okay. If, during the course of my exam, if
16 there's something you're not sure about, you need
17 to look at your notes, by all means let us know
18 and we'll take a break and we'll take a look at
19 them. Let's talk about Exhibit 61 and 62.
20 Again, where did these come from?

21 A Are there three sets of those, uh, behind that hood?

22 Q No, sir.

23 A Just two sets of leg ir -- leg irons?

24 Q Yes, sir.

25 A Those would have come out of, uh, Ms. Tadych's

1 bedroom.

2 Q Both sets?

3 A Yes.

4 Q Okay.

5 A I had testified that one set came out of Steven

6 Avery's house, because I thought -- as they were

7 being brought up, I thought I had seen three sets.

8 Q Okay. So being like any other human, any other

9 officer, you make mistake; right?

10 A Well, there was a pair of leg irons taken out of

11 Steven's house, and just the way they were brought

12 up, I thought I had seen -- because I saw one pair,

13 and then two were brought up later, so I thought I

14 had seen three sets of leg irons.

15 Q I understand. But -- So you're attempting,

16 simply, to correct what you told Mr. Kratz on

17 direct?

18 A Yes.

19 Q Which you acknowledge to this jury was an error?

20 A Yes.

21 Q All right. And that happens because you're a

22 human; right?

23 A Correct.

24 Q Neither one of these, that being Exhibits 61 or

25 62, has any fingerprints on it that belonged to

1 Brendan Dassey; correct?

2 A Correct.

3 Q Neither one of them has any DNA evidence

4 connecting either one of these items to Brendan

5 Dassey; correct?

6 A Correct. With the caution that I'm not positive they

7 were processed. I'd have to look at the Crime Lab

8 reports to make sure.

9 Q Okay. Well, if we take a break, you'd certainly

10 do that for us, wouldn't you? And we'll revisit

11 that when we get a chance?

12 A Certainly, if you'd like.

13 Q I believe you testified about, and I can't recall

14 the, uh -- the exhibit number, but it was one of

15 the Austin depictions with the Avery garage roof

16 removed. Remember that?

17 A Yes.

18 Q And I believe you testified about two pieces or

19 two fragments of bullets that you believe were

20 located within that garage; right?

21 A Yes, sir.

22 Q Would you agree with me that the Austin depiction

23 of that particular garage, to the extent that it

24 does not include a great many items that were

25 actually physically present at the time when you

1 first got there, um, that the Austin exhibit
2 doesn't necessarily show reality?

3 A That's correct.

4 Q In fact, I think you called it a cleaned-up
5 version?

6 A Yes. There's a lot of debris that was not included
7 in that depiction.

8 Q Well, wasn't just debris, there were a lot of
9 items that were not included?

10 A By debris, items. I mean, I'm --

11 Q I -- I think of --

12 A I agree --

13 Q -- debris as something you might throw away?

14 THE COURT: One at a time. Go ahead.

15 A Items are included in my definition of debris, so,
16 yes, items, debris, pieces of machinery, property.

17 Q Exhibit 58, these are the jeans that you got from
18 Brendan after he basically showed them to you;
19 right?

20 A Yes.

21 Q Okay. You testified they appear to have bleach
22 on them; right?

23 A Correct.

24 Q Okay. These went to the lab, did they not?

25 A I believe so, yes.

1 Q No human blood on there, is there?

2 A No.

3 Q No blood of any kind on there, is there?

4 A I was advised that they had been cleaned.

5 Q Pardon me?

6 A I was advised that they had been washed.

7 Q All right.

8 A But, no, there was no blood of any kind on there.

9 Q Twenty-seven years in the business, you work

10 closely with the lab, are you telling me that the

11 fact that those jeans may have been laundered

12 once, or even twice, say, between October 31 --

13 and I think you picked him up on -- What day?

14 The 1st?

15 A March 1 --

16 Q Okay.

17 A -- '06.

18 Q Let's say they'd been laundered in between, are

19 you telling me that the lab would be incapable of

20 determining the presence of blood on those jeans?

21 A Greatly reduced, if at all possible.

22 Q I understand you're not an expert, but you've had

23 occasion to have items examined by the lab that

24 have, in fact, been laundered, haven't you?

25 A I may have. I don't have, uh, independent knowledge

1 right now, and in my instances they have not found
2 blood on those items if -- if it's occurred. I -- I
3 don't recollect ever having that happen.

4 Q Now, you talked briefly about some conversation
5 you had with Brendan, and this was up at, uh, Fox
6 Hills Resort; right?

7 A That's correct.

8 Q He stayed there and his brother stayed there, I
9 think, on the 27th?

10 A Yes. And his mother.

11 Q Okay. And who picked up the tab for that stay?

12 A That may have been, uh, the county. I'm not sure.

13 Q It was arranged, and you were well aware that it
14 was arranged, that they would be staying there,
15 and could stay there, and it wouldn't cost them
16 anything; right?

17 A Certainly.

18 Q Okay. Be it the State, Calumet County, Manitowoc
19 County, you knew the government picked up the
20 bill?

21 A Government picked -- Yes.

22 Q All right. In fact, when you went up there, it
23 was about 11:50 at night; right? I'm talking
24 about --

25 A I'm not sure.

1 Q -- Fox Hills.
2 A 10:50 or 11:50. I -- I --
3 Q Did I say --
4 A Yeah.
5 Q -- 11:50?
6 COURT REPORTER: One at a time,
7 please --
8 ATTORNEY EDELSTEIN: I'm sorry.
9 COURT REPORTER: -- if possible.
10 Q (By Attorney Edelstein) 10:50 sound better?
11 A That sounds better.
12 Q And during the course of that conversation you
13 had with Brendan, um, you're talking to him about
14 an incident where he had, um, some bleach stains
15 on his pants; right?
16 A Correct.
17 Q And you got around to talking to him about what
18 he was doing in the garage, and you talked about
19 cleaning up some red stuff?
20 A Yes.
21 Q Okay. And the truth of the matter is,
22 Mr. Fassbender, that during the course of that
23 conversation with Brendan, the first person to
24 use the word -- or to suggest that it was blood
25 on the floor was, in fact, yourself. Does that

1 sound right?

2 A That's -- Yes, that sounds right.

3 Q All right. It wasn't Brendan who said, I thought

4 I was cleaning up blood. Right?

5 A That's correct.

6 Q You asked him, could it have been blood? And he

7 simply said, could have been. Right?

8 A After he described the color, yes.

9 Q Okay. So you asked him if it could have been

10 blood, and he said, yes, it could have been.

11 Right?

12 A Something to that effect, yes.

13 Q And then you asked him -- and we're talking about

14 February 27, '06, you gave him a question to the

15 effect that, well, what do you think it was now?

16 And we're talking about that present time.

17 February 26; right?

18 A Yes.

19 Q Okay. Um, and he said, could have been blood.

20 A He said he believed it was blood.

21 Q Okay. And those responses came after you

22 indicated that it could have been blood or you

23 thought it was blood; correct?

24 A After my question.

25 Q All right.

1 ATTORNEY EDELSTEIN: That's all.

2 THE COURT: Any redirect, Counsel?

3 ATTORNEY KRATZ: Couple of questions,
4 just so that we're clear.

5 **REDIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q Investigator Fassbender, are you -- or do you now
8 have an independent memory of how many sets of
9 leg irons and how many sets of handcuffs came
10 from the bedroom of Barb Janda on the 1st of
11 March?

12 A To the best of my memory, two sets of leg irons and
13 two sets of handcuffs.

14 Q If, uh, we would show you the evidence bags, that
15 is, the -- the actual containers in which the
16 handcuffs, uh, were placed in on the 1st of
17 March, would that tend to refresh your
18 recollection of that?

19 A Yes, it would.

20 Q I'm going to have, uh, Mr. Fallon here bring you
21 Evidence Tag 8266 and 8267. Have you take a look
22 at those and tell me if that refreshes your
23 memory?

24 A The bag, uh, with Evidence Tag No. 8266 contained one
25 pair of silver handcuffs, uh, taken from the bedroom

1 of Barb Janda at the time, Barb Tadych, now. And
2 Evidence Tag 8267 contained one pair of silver
3 handcuffs also taken from that same bedroom. Uh,
4 Barb Janda's bedroom.

5 Q So how many pairs of handcuffs did Barb have in
6 her bedroom?

7 A So two pair of handcuffs in her bedroom.

8 Q So the jury understands, and they'll hear from
9 Deputy Kucharski tomorrow, but there were
10 handcuffs and leg irons also recovered from the
11 bedroom of Steven Avery; is that right?

12 A Yes.

13 ATTORNEY KRATZ: I think that's it from
14 this witness, Judge. Thank you

15 THE COURT: All right. Uh, the witness may
16 step down. Any further witnesses?

17 ATTORNEY KRATZ: Uh, I would prefer to
18 start at, uh -- tomorrow morning, Judge, with our
19 other law enforcement, uh, witnesses, if that would
20 be okay with the Court?

21 THE COURT: All right. Tomorrow
22 morning, 8:30?

23 ATTORNEY KRATZ: Sounds good.

24 THE COURT: Uh, jurors, we're going to
25 adjourn for the day. I'm going to remind you again,

1 I'm sure this is going to get tedious listening to
2 me saying -- say this, but you can't talk about this
3 case with anybody, including fellow jurors. We'll
4 see you tomorrow morning at 8:30.

5 (Jurors out at 4:37 p.m.)

6 THE COURT: Anything further on the
7 record this afternoon, gentlemen?

8 ATTORNEY KRATZ: No.

9 ATTORNEY FREMGEN: No, Judge.

10 (Court stands adjourned at 4:38 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
21
22
23
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25

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL
5 TRIAL DAY 2

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** APRIL 17, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

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

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

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

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

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

24 BRENDAN R. DASSEY
Defendant
25 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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(Reconvened at 8:34 a.m.)

THE COURT: Morning counsel.

ATTORNEY KRATZ: Morning.

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

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

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

THE COURT: You may call your first witness.

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

THE CLERK: Please raise your right hand.

WILLIAM TYSON,

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

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

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 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

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spray?

A To some extent.

Q Were you able -- Did you receive any positive,
uh, um, results, uh, from any of those items that
you might have sprayed?

A I don't believe so.

Q Okay. Nothing further. Thank you.

THE COURT: Any redirect, Counsel?

ATTORNEY FALLON: None. Thank you.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Your --

ATTORNEY FALLON: State --

THE COURT: -- next --

ATTORNEY FALLON: State would call
William Newhouse.

THE CLERK: Please raise your right hand.

WILLIAM NEWHOUSE,

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

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

THE WITNESS: It's William L. Newhouse.
And then it's N-e-w-h-o-u-s-e.

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)
) SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
17

18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL
TRIAL DAY 3

5 vs.

Case No. 06 CF 88

6 BRENDAN R. DASSEY,

7 DEFENDANT.

8
9
10 **DATE:** APRIL 18, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

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

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

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

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

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

24 BRENDAN R. DASSEY
25 Defendant
Appeared in person.

COPY

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 9:02 a.m.)

2 THE COURT: Morning, ladies and gentlemen,
3 counsel. Uh, this is State of Wisconsin vs. Brendan
4 Dassey, 06 CF 88. Appearances, please.

5 ATTORNEY FALLON: Morning, Your Honor.
6 May it please the Court, the State continues in
7 its appearance by Special Prosecutors Ken Kratz,
8 Tom Fallon, Norm Gahn.

9 ATTORNEY FREMGEN: Attorney Mark Fremgen
10 appears with Attorney Ray Edelstein. Brendan
11 Dassey appears in person.

12 THE COURT: All right. Uh, members of the
13 prosecution, are we ready to go?

14 ATTORNEY FALLON: We are.

15 THE COURT: Okay.

16 ATTORNEY FALLON: State --

17 THE COURT: Proceed.

18 ATTORNEY FALLON: State will call its
19 first witness, Kayla Avery.

20 THE CLERK: Please raise your right
21 hand.

22 **KAYLA AVERY,**
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

25 THE CLERK: Please be seated. Please state

1 your name and spell your last name for the record.

2 THE WITNESS: Kayla Avery, A-v-e-r-y.

3 **DIRECT EXAMINATION**

4 BY ATTORNEY FALLON:

5 Q Good morning. How old are you, Kayla?

6 A Fifteen.

7 Q All right. And do you go to school?

8 A Yes.

9 Q What school do you go to?

10 A Mishicot. Mishicot High School.

11 Q All right. And what grade are you in there?

12 A Ninth.

13 Q All right. And would you tell us who your mom
14 and dad are?

15 A Earl and Candy Avery.

16 Q Okay. Um, are you related to Brendan Dassey?

17 A Yes.

18 Q And, uh, how are you related to Brendan?

19 A Um, well, we're first -- we're first cous -- we're
20 first cousins, and through my dad is -- my dad is
21 Barbara's brother, and Brendan's Barbara's son.

22 Q Okay. Very good. Now, um, while you're growing
23 up, were you and Brendan close or good friends?

24 A Um, kind of. Not really.

25 Q All right. Do you like Brendan?

1 A Yes.

2 Q Okay. Do you care about him a great deal?

3 A Yes.

4 Q Okay. Um, how often would you see Brendan on a
5 normal -- at a normal time?

6 A Um, prob -- probably once a week probably.

7 Q Okay. All right. Now, thinking about the time,
8 from Halloween on October 31, 2005, until, say,
9 the end of February, 2006, about four-month
10 period, did you notice any changes in Brendan?

11 A Kind of. Yeah.

12 Q All right. Tell us about the changes that you
13 saw?

14 A It looked like he was losing weight and he was a
15 little bit more upset.

16 Q All right. You're -- you're -- you're going to
17 have to put that mike a little bit closer so that
18 everybody can hear, all right? All right. Thank
19 you. Um, why was that different from what you
20 had seen before that?

21 A Um, he really wasn't acting the same.

22 Q Okay. Had he -- Before that, was he more of a
23 happy-go-lucky type of boy?

24 A Kind of. Yeah.

25 Q Was he pretty friendly to you?

1 A Yeah.

2 Q All right. And as far as you could tell, did he
3 seem to be friendly to other people?

4 A Uh, yeah.

5 Q All right. But during this four-month period, is
6 that what changed?

7 A Um, kind of. He was still nice to people.

8 Q All right. But was he as outgoing as he was
9 before?

10 A Kind of. Not really.

11 Q Not really. Okay. All right. I want to direct
12 your attention to a time in December of 2005.
13 Did you have a conversation with Brendan about
14 Teresa Halbach?

15 A Kind of. Yeah.

16 Q All right. Would you tell us about that
17 conversation with Brendan?

18 A Well, um -- Well, not in December. November.

19 Q Okay. Tell us about it?

20 A In November, um, he was -- he was, um, sitting in our
21 hallway, and, um, he was just in there. One of my
22 friends looked out the door, because we were having a
23 birthday party, and he came over, um, and he -- he
24 was -- my friend just looked out the door and seen
25 him crying, and then she came to me. And then I went

1 out there by him, and I asked him what was wrong, and
2 all he did is shrugged his shoulders.

3 Q Okay. And then what did you ask?

4 A And then I asked him if it was about the Steven
5 thing.

6 Q All right.

7 A And he shrugged his shoulders, and I was, like, you
8 know you can -- you know you can talk to me, and then
9 I just went back inside my room.

10 Q All right. And whose birthday party was this?

11 A My cousin, Ashley's.

12 Q All right. And what's Ashley's last name?

13 A Chevalier.

14 Q Okay. And where was the birthday party being
15 held?

16 A My house.

17 Q All right. Now, when is her birthday? Is it --
18 Is it February? Or January? Or when is her
19 birthday?

20 A I think it's February.

21 Q All right. Now, was the party actually on her,
22 um, birthday, or a day or two before or after?
23 Do you remember?

24 A No.

25 Q Okay. Now, you asked Brendan about, did it have

1 something to do with this "Steven thing". Tell
2 us about the conversation you had with Brendan
3 regarding Steven to which you referred?
4 A We didn't have a conversation about it.
5 Q All right. Didn't you tell your counselors at
6 school about a conversation you had with Brendan?
7 A Yeah.
8 Q All right. And you told Officers Wiegert and
9 Fassbender about that conversation as well;
10 right?
11 A Yes.
12 Q All right. Tell us what you told them?
13 A I told them that he was crying on the steps and stuff
14 like that.
15 Q All right. What -- What about the conversation
16 regarding a fire? Tell us about that?
17 A That on, I think it was October 31, uh, we went down
18 by my grandma's for trick or treating, and on the way
19 back, I asked my mom if we could go down to the
20 bonfire because I seen it, and my mom said, no.
21 Q All right. In terms of your conversation with
22 your counselors, the one you told Investigator
23 Wiegert and Fassbender about -- these two guys
24 right here -- You recognize those two guys?
25 A (No verbal response.)

1 Q Yes?

2 A Yes.

3 Q Yes. Okay. Did you tell -- You told them about
4 a conversation you had with Brendan about --
5 about that bonfire and what was in the bonfire.
6 Tell us about that?

7 A I really don't remember.

8 Q All right. Now, Kayla, didn't you tell the
9 officers that Brendan told you he had seen body
10 parts in a fire?

11 ATTORNEY FREMGEN: Judge, I'd object at
12 this point. I think, first, the State should
13 probably try to refresh recollection (inaudible.)

14 THE REPORTER: Mr. Fremgen, can you
15 speak up, please?

16 ATTORNEY FREMGEN: Oh, I'm sorry.
17 Judge, my -- my argument is simply that I think
18 the State should try to refresh recollection with
19 whatever documents they're referring to, as far
20 as the statement, before they go directly to, I
21 think, the efforts they're going to now.

22 THE COURT: Mr. Fallon?

23 ATTORNEY FALLON: Well, it is our
24 witness to, uh, pursue -- proceed as we feel
25 appropriate under the circumstances. I'm asking

1 her, directly. I mean, quite frankly, if one is
2 to impeach a witness, one must give the witness,
3 first, an opportunity.

4 THE COURT: Yeah. I'm going to overrule
5 the objection. You may go on.

6 ATTORNEY FALLON: All right.

7 Q (By Attorney Fallon) What did -- What did you
8 report telling the officers that Brendan told you
9 about the fire?

10 A I really can't remember.

11 Q All right. Did you give the officers a
12 statement?

13 A Uh, yeah.

14 Q All right.

15 (Exhibit No. 163 marked for identification.)

16 ATTORNEY FALLON: May I approach?

17 THE COURT: You may.

18 Q (By Attorney Fallon) Kayla, I'm showing you what
19 has been marked for identification as this
20 Exhibit 163. Would you hold that for me, please?
21 All right. I'm going to take my seat here and
22 ask some questions. Do you recognize that
23 exhibit?

24 A (No verbal response.)

25 Q Is that a yes?

1 THE COURT: You have --
2 THE WITNESS: Yes.
3 THE COURT: -- to answer out loud.
4 THE WITNESS: Yes.
5 Q (By Attorney Fallon) All right. And is that the
6 statement that you gave to Officers, um,
7 Fassbender and Wiegert?
8 A Yes.
9 Q All right. Would you take a moment to read that
10 statement to yourself, please? Have you finished
11 reading it?
12 A Yes.
13 Q I'm going to have Mr. Kratz take the statement.
14 Okay. Does reviewing that statement help you
15 remember?
16 A Yes.
17 Q All right. What did Brendan tell you about the
18 fire? You'll have to pull the microphone a
19 little closer so we can hear you.
20 A He didn't tell me anything. I -- I kind of made up
21 the statement. And I'm sorry.
22 Q All right. What did you make up? Tell us what
23 you said you made up?
24 A That he seen body parts in there. I didn't -- He
25 didn't see it. I -- He didn't tell me anything like

1 that, or he didn't see Teresa's body or anything like
2 that.

3 Q You also told the officers that Brendan told you
4 he saw Teresa alive and pinned up, didn't you?

5 A Yes.

6 Q All right. And you love Brendan; right?

7 A Yes. Very much.

8 Q And you wouldn't tell -- You wouldn't say
9 anything like that to get him in trouble, would
10 you?

11 A No. Not really.

12 Q All right. But yet you told the officers that
13 those were the conversations you had with
14 Brendan; isn't that right?

15 A Yes.

16 Q All right. You told -- You told the officers
17 that Brendan told you he had seen Teresa pinned
18 up in Steven's trailer, didn't you?

19 ATTORNEY FREMGEN: Ob -- Object. I
20 don't believe that was what the statement
21 actually says.

22 ATTORNEY FALLON: There's --

23 ATTORNEY FREMGEN: And if I could be
24 heard.

25 ATTORNEY FALLON: There's additional

1 statements, Counsel, as you well know.

2 ATTORNEY FREMGEN: Referring to the
3 statement -- If we're referring to the statement
4 that was just used to refresh recollection, I
5 don't believe that's exactly what it says.

6 THE COURT: Well, why don't you restate the
7 question, Mr. Fallon.

8 ATTORNEY FALLON: All right. I'll
9 restate the question.

10 Q (By Attorney Fallon) First of all, um, Kayla, so
11 that we're clear, the officers came and
12 interviewed you, uh, the end of February; right?

13 A Yes.

14 Q All right. And you had a long conversation with
15 him, your mom, and your dad; right?

16 A Yes.

17 Q Okay. And in the written statement that I just
18 showed you, you reported that Brendan told you he
19 had seen body parts in the fire on Halloween;
20 right?

21 A Yes. But that's not true.

22 Q All right. And you also told the officers in a
23 separate conversation that day that you had
24 seen -- or that Brendan had seen Teresa alive in
25 Steven's trailer?

1 A Yes.
2 Q All right. And that she was pinned up in a
3 chair?
4 A Yes. But that's not true.
5 Q All right. Now, you're saying today you made
6 that up?
7 A Yes.
8 Q All right. So you're telling us you made
9 something up to get Brendan into trouble?
10 A Not really. I was just really confused about
11 everything.

12 ATTORNEY FALLON: No further questions
13 for this witness. And to the extent, solely that
14 Exhibit 163 was referred to for refreshment and
15 impeachment, only that portion we seek admission.

16 THE COURT: All right. Any objection to
17 that?

18 ATTORNEY FREMGEN: With that condition,
19 no.

20 THE COURT: All right. It's received.
21 Cross.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q You indicated that you would often see Brendan
25 once a week?

1 A Yes.

2 Q Did you guys hang out and do stuff together?

3 A No. When I went over there, we played video games
4 and stuff, when I went inside his room, and he would
5 be playing them.

6 Q Would it be when your families got together you'd
7 see them -- him then?

8 A Normally, when we went over there.

9 Q You would go over there?

10 A (No verbal response.)

11 Q Okay. Would you -- Would you also be there with
12 Blaine, his brother?

13 A Yes.

14 Q And the other brothers? Bobby?

15 A Yes. Sometimes.

16 Q Or Bryan?

17 A Yes.

18 Q You indicated that one of the -- something that
19 concerned you was Brendan was losing weight;
20 right?

21 A Yes.

22 Q And he was a little more upset?

23 A Yes.

24 Q Did he sometimes walk around being upset?

25 A Kind of. Yes.

1 Q Just seemed to you that it was a little more than
2 normal?
3 A Yes.
4 Q Did -- Now, did you know whether or not Brendan
5 had a girlfriend at that time?
6 A At the time, after he was kind of on the steps, I
7 found out that he had a girlfriend. Yes.
8 Q Do you know what happened between him and his
9 girlfriend?
10 A Um, no. I heard that they broke up, but I don't know
11 if that was true or not.
12 Q Don't know that, though?
13 A Yes.
14 Q At that birthday party, you tried to talk with
15 Brendan; right?
16 A Yes.
17 Q And you sat down with Brendan on the stairs?
18 A Yes.
19 Q And tried to get him to open up to you?
20 A Yes.
21 Q But all he did was shrug his shoulders?
22 A Yes.
23 Q And then you just walked away then?
24 A Yes.
25 Q Now, Mr. Fallon was asking you to look at a -- a

1 statement that you wrote up with two, uh -- well,
2 one investigator and -- and one special agent
3 from the Department of Criminal Investigations.
4 Do you remember that? You just saw it a minute
5 ago?

6 A Yes.

7 Q You just said that you made that up?

8 A Yes.

9 Q So when you were talking to the officer -- You
10 understand that they're police officers; right?

11 A Yes.

12 Q Okay. So you were lying to the police officer?

13 A Yes.

14 Q Why did you lie?

15 A I was confused and I didn't know what to do.

16 Q Who were you confused about?

17 A I don't know. Everything.

18 Q Did -- Now, at the time you spoke to the
19 officers, that was in late February; is that
20 right? Of 2006?

21 A I -- Yes, I think so.

22 Q Couple weeks before Brendan was arrested; right?

23 A Yes.

24 Q Around that time?

25 A Yes.

1 Q You'd heard some of the news that -- about what
2 happened to Teresa Halbach?
3 A Yes.
4 Q It was -- It was kind of hard to miss some of
5 that; right?
6 A Yes.
7 Q Did you know about that burn pit behind Steven's
8 garage?
9 A Yes. I heard it on the news.
10 Q Read it in the news?
11 A Yes.
12 Q Did you read that they found body parts in the --
13 the burn pit, too?
14 A Yes.
15 Q What -- When you first spoke to the officers,
16 and -- and, again, in -- sometime in late
17 February of 2006, did they come there to talk to
18 you about Brendan?
19 A I think. I can't remember, but I think -- I think
20 so.
21 Q I -- I don't want you to tell us other things
22 that you said to the officers, okay? But could
23 it have been they came to talk to you about
24 Steven?
25 A Yes.

1 Q Okay. And then Brendan's name came up?

2 A Yes.

3 Q When they spoke to you, did they -- let's -- ask

4 you, specifically, about the burn pit and the

5 body parts?

6 A Yes.

7 Q So when you say that you -- you told them you saw

8 body parts, it was in response to a question they

9 asked you about that?

10 A Yes.

11 Q When you say that Teresa was pinned up in a

12 chair, where did you hear that?

13 A I don't know.

14 Q Did someone tell you that?

15 A Probably, yeah. I don't remember.

16 Q Don't remember where it came from?

17 A Yes.

18 Q But you remember the body parts and burn pit came

19 from reading the news or TV?

20 A Yes.

21 Q Now, at this point in time Steven had already

22 been arrested; right?

23 A Yes.

24 Q Okay. And he was already charged with the -- the

25 murder of Teresa Halbach; right?

1 A I think so. I don't know.

2 Q You don't remember?

3 A Yes.

4 Q This was several months after he was arrested
5 though; right?

6 A I think so. Yes.

7 Q Thank you, Kayla.

8 THE COURT: Redirect?

9 ATTORNEY FALLON: Yes. One question.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q Kayla, isn't it true the officers came to talk to
13 you because of what you told the counselors at
14 school? They asked you about what you told the
15 counselors?

16 A I don't know. I can't remember.

17 Q Are you confused?

18 A Right now? Yes.

19 ATTORNEY FALLON: No further questions.

20 THE COURT: All right. You may step down.

21 Next witness, Counsel?

22 ATTORNEY GAHN: Uh, the State would call
23 Sherry Culhane to the stand.

24 THE CLERK: Please raise your right hand.

25 **SHERRY CULHANE,**

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

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

5 THE WITNESS: Sherry Culhane,
6 C-u-l-h-a-n-e.

7 **DIRECT EXAMINATION**

8 BY ATTORNEY GAHN:

9 Q And, Ms. Culhane, what is your occupation?

10 A I work as a forensic scientist in the Wisconsin State
11 Crime Laboratory in Madison, Wisconsin.

12 Q And how long have you been employed, uh, at the
13 State Crime Lab in Madison?

14 A Twenty-three years.

15 Q And what are your duties and responsibilities at
16 the Crime Lab?

17 A I work in the DNA section of the Crime Lab, so I'm
18 responsible for examining physical evidence, uh,
19 usually things like clothing, bedding, objects, uh,
20 samples that are taken from an alleged crime scene or
21 an alleged victim, for the presence of biological
22 material. We attempt to identify that biological
23 material, and then, uh, develop a DNA profile from
24 that.

25 We are also submitted DNA profiles from

1 standard samples from specific individuals, and
2 we also develop DNA profiles from those samples.
3 And we basically compare the two to see if an
4 individual could or could not be the source of
5 the questioned evidence sample.

6 Q And do you, yourself, have any additional duties
7 at the Crime Lab?

8 A Yes, I do. I'm the technical unit leader in the
9 section, which, uh, means that I'm also responsible
10 for additional duties such as training new analysts
11 in -- in our section, I'm responsible for overseeing
12 the quality control program, um, make sure any
13 technical issues that are resolved in this section.
14 I'm responsible for setting up new equipment, new
15 procedures, anything that are brought online, uh,
16 those are all under my responsibility.

17 Q Ms. Culhane, before I ask you the next question,
18 could you maybe pull the microphone just a little
19 closer to you?

20 A Okay.

21 Q Thank you. Um, is your full workday devoted to,
22 um, DNA analysis or testing?

23 A Yes, it is.

24 Q And how long have you been doing DNA testing at
25 the Crime Lab in Madison?

1 A Um, since 1996.

2 Q And approximately how many DNA tests have you,
3 yourself, performed or run?

4 A Uh, conservative answer for myself would be at least
5 five thousand.

6 Q And what education do you have that qualifies you
7 to, um, work in the area of DNA testing?

8 A I have a Bachelor of Science Degree in biology. Um,
9 as I said, we went online in 1994 with DNA testing,
10 and I went through a -- a -- about a year-long
11 training program, um, in the laboratory under the
12 direction of my supervisor.

13 Uh, the training program consisted of
14 lectures, uh, running many, many samples through
15 the system, um, uh, proficiency tests, competency
16 tests, um, and since that time I've also, uh,
17 attended many schools and workshops specifically
18 related to DNA testing or forensic applications,
19 and also interpretations.

20 I've also taken a statistics course
21 online and a molecular biology course and
22 advanced chemistry class.

23 Q Do you attend meetings or seminars on DNA
24 technology?

25 A Yes, I do.

1 Q And do you keep up-to-date and read the
2 scientific literature on DNA technology?

3 A Yes, I do.

4 Q And why is it that you, um, attend meetings and
5 seminars and keep up-to-date with the literature?

6 A Uh, meetings and seminars are -- are really good
7 venue to be able to talk to other individuals who are
8 in crime labs, who are doing the same type of
9 testing, individuals who are testing new procedures,
10 new types of equipment. Most of these meetings have
11 representatives from, um, the instruments that we use
12 or the kits that we use, and so these meetings allow
13 us to exchange a lot of information.

14 Uh, research is being done, um, all of
15 that information we can find in scientific
16 journals that we have access to in the
17 laboratory.

18 Q Have you testified in court before today?

19 A Yes, I have.

20 Q Approximately how many times?

21 A Ninety-two.

22 Q Have you ever been qualified as an expert in DNA
23 testing?

24 A Yes.

25 Q And approximately how many times?

1 A About 32 times.

2 Q Have you ever been rejected as an expert in DNA
3 technology?

4 A No.

5 (Exhibit No. 164 marked for identification.)

6 Q I'm going to ask Mr. Kratz to hand you what has
7 been marked as Exhibit 164. Just ask you to
8 identify that?

9 A This is a copy of my, uh, curriculum vitae. It has
10 all of my qualifications, and all the classes, and,
11 uh, educational, uh, seminars that I've attended.

12 Q Okay. And, basically, that summarizes what you
13 talked about just up until now?

14 A Yes.

15 Q Okay. Um, what I'd like to do now is take a few
16 moments, and I'd like you to explain to the
17 jurors exactly what DNA, uh, stands for, and what
18 it is, and we've, um, prepared a PowerPoint
19 demonstration that you have seen; correct?

20 A Yes.

21 Q And would that assist you in, um, explaining DNA
22 and its properties to the jury?

23 A Yes, it will.

24 Q Um, we put up our first slide, and you can -- Uh,
25 and, also, do you have a, um -- a laser pointer

1 in the event that you may need one?

2 A No, I don't.

3 Q We're going to provide you with that, too, and
4 please feel free to use that if you need to. So
5 could you start with telling the jury, um, what
6 DNA stands for and what it is?

7 A DNA stands for deoxyribonucleic acid, um, and,
8 basically, it's the information storage system of the
9 cell. Um, you can see -- Probably easier to see
10 right here, um, this is a very small segment of DNA.
11 It's a 3-D model of the DNA. And it illustrates the
12 fact that DNA is made up of, um, a series of smaller
13 units that are strung together in a specific order.
14 That order is what determines the information and how
15 that information is stored in the DNA.

16 Q And could you, um, explain to the jurors some of
17 the characteristics about DNA and how it's
18 inherited?

19 A Yes. The easiest way to think of DNA is to compare
20 it to a blueprint. Um, just like when you build a
21 house, all the information that you need to build a
22 house is contained in the blueprint. All the
23 directions, all the materials, everything you need.
24 DNA is exactly the same, only on a cellular level.
25 So all of the information that your body needs to

1 produce proteins, enzymes, everything to basically
2 function, all that information is contained in your
3 DNA.

4 Your DNA directs cellular development.
5 And if you'll look at this, um, schematic here,
6 um, the information is stored in specific regions
7 we refer to as genes. DNA directs development of
8 your cells all the way from the beginning of
9 conception all the way through your adult life.

10 So things like your eye color, hair
11 color, the shape of your face, all of those are
12 characteristics that are determined by your
13 genes.

14 In a forensic setting, we're more
15 interested in the areas of DNA that are not
16 connected to a functional gene. Um, scientists
17 really don't know what their function is, but
18 they're there and there's a lot of variation
19 within the population. So in the forensic
20 community, we're looking at regions of DNA that
21 don't really do anything, and, um, that's where
22 we're -- we're most interested.

23 DNA's also inherited from your
24 biological parents. You inherit 50 percent from
25 your mother and 50 percent from your father. And

1 you, in return, uh, pass on 50 percent of your
2 DNA to your offspring.

3 Q How many analysts are there at the Crime Lab in
4 Madison that are performing DNA testing?

5 A Currently, we have, uh, about ten. Over the course
6 of years, we've had 10 to 12 people.

7 Q Since you began doing DNA testing at the Madison
8 Crime Lab, can you estimate approximately how
9 many samples of evidence have been analyzed, uh,
10 for DNA testing?

11 A A conservative answer would be at least 60,000 over
12 the course of the years.

13 Q And do you and your laboratory undergo
14 proficiency testing?

15 A Yes, we do.

16 Q And what is that?

17 A Proficiency testing, um, in our laboratory -- We
18 purchase proficiency tests from an outside private
19 company. Proficiency tests are designed to mimick
20 forensic samples. So we treat them just like we do a
21 case. They come into the lab from this private
22 company, and we examine them just like we would a
23 case. The proficiency tests are meant to test the
24 laboratory system, as well as the individual
25 analysts.

1 We, uh, examine these just like we do
2 evidence. We developed DNA profiles from them,
3 and we report those DNA profiles back to the
4 company that we purchased them from.

5 Q And have you passed all of your proficiency
6 tests?

7 A Yes.

8 Q And, um, is your -- Madison Crime Laboratory hold
9 any certificates or accreditation?

10 A Yes. We are an accredited laboratory system. Um, we
11 hold a certificate of accreditation from ASCLD, which
12 stands for American Society of Crime Lab Directors.
13 And it is a group of individuals that come into the
14 laboratory once every five years and audit the
15 laboratory -- um, every section of the laboratory.
16 Uh, they look at all of our procedures. And this,
17 um, certificate is awarded and -- and re-evaluated
18 once every five years.

19 Q And what does that mean to be accredited in the
20 forensic scientific community?

21 A Well, as I said, it's a -- part of the process of
22 being accredited is to be audited. And what that
23 means is you have a group of probably 10 to 15 people
24 who come into the lab, they look at everything from
25 security, they check, uh, evidence handling

1 procedures, how we take in evidence, how we store the
2 evidence.

3 Um, and then specific auditors are
4 assigned to different sections at the laboratory.
5 DNA usually has two to three auditors assigned to
6 DNA. They check the physical layout of the
7 laboratory, they check all of our validations of
8 our equipment, all of our quality control. And,
9 in addition to that, they pull, uh, case jackets
10 from probably 10 to 15 different cases from each
11 analyst, and analyze those to make sure that
12 we're following our own protocols, and that we're
13 making the correct interpretations.

14 It also checks, uh, educational
15 backgrounds of all our analysts to make sure
16 that -- that we are meeting all the requirements
17 that are necessary, that have been put forth by,
18 um, the DAB, which is a -- a group of individuals
19 from the FBI that sets forth standards for these
20 audits.

21 Q And does your laboratory only perform DNA testing
22 for law enforcement or for the prosecution?

23 A Uh, by law, we perform testing for authorized
24 submitters. Authorized submitters would be district
25 attorney's offices, uh, coroner's offices, uh, police

1 agencies. Um, but we do any requests that come
2 through them.

3 Q Are you familiar with the Innocence Project at
4 the University of Wisconsin Law School in
5 Madison?

6 A Yes, I am.

7 Q And what is that, um, Innocence Project, briefly?

8 A My understanding, it is -- is that it's a group of,
9 um, law students that review post-conviction cases.
10 So they look at cases that have already been decided
11 in court. And they review these cases to see if
12 they're appropriate for a new trial because of new
13 evidence, or new technology that was not available at
14 the time.

15 Q And do they ever request testing from your Crime
16 Laboratory?

17 A Yes.

18 Q And as a result of cases that you've tested,
19 post-conviction cases, have people ever been
20 freed from prison whom --

21 A Yes.

22 Q -- have been wrongfully convicted?

23 A That's correct.

24 Q And you do that work at your Crime Lab, also?

25 A Yes.

1 Q Um, I would like to now, uh, go back to the
2 PowerPoint and just ask -- ask you -- to you --
3 would you describe to the jurors where DNA is
4 found?

5 A DNA can be found in all the nucleated cells in your
6 body. Um, for our purposes, most -- If you'll look
7 at the slide here, most of the common types of
8 biological materials we're dealing with are blood,
9 semen, saliva, and hair. But any biological
10 component of your body that has a nucleated cell has
11 the potential for DNA.

12 In the blood, it would be white blood
13 cells. Semen would be epithelial cells, skin
14 cells, and sperm sells. Saliva would be skin
15 cells. Um, all of these, um, types of biological
16 materials have a complete copy of your DNA. So
17 the -- the important fact to remember, especially
18 with forensics, is that, um, these questioned
19 biological samples that may be found on a victim,
20 alleged victim, or at an alleged crime scene, um,
21 have a particular DNA profile, and that profile
22 is the same as any other, um, nucleated cell in
23 that person's body.

24 Q Ms. Culhane, before I go any further, I'm going
25 to ask that, um, when you point something out

1 with the laser pointer, could you use the --

2 A Sure.

3 Q -- big screen so that the defense can also see

4 what --

5 A Sure.

6 Q -- you're pointing to?

7 A I'm sorry.

8 Q Thank you, ma'am. So, basically, um, the DNA in

9 one person's body, whatever tissue it comes from,

10 is the same?

11 A Correct.

12 Q And, um, is it possible, uh, to make comparisons

13 of the DNA that you find in a person's body,

14 wherever it comes from, with, perhaps, samples

15 that are found at a crime scene?

16 A Yes, it is.

17 Q And what allows you to do that?

18 A Uh, we can develop the DNA profile from the

19 questioned sample, and we can also develop a DNA

20 profile from the reference sample, or a standard

21 sample, that it's from a known individual, and

22 compare those profiles to see if they are consistent

23 with one another or not.

24 Q And in order to test these biological fluids,

25 what, um, testing procedure do you follow at the

1 Crime Lab?

2 A Currently, the type of technology that we're using is
3 referred to as DNA: STR typing. Um, and this is what
4 most -- as far as I understand, what most crime labs
5 in the country are using, this type of technology for
6 typing.

7 Q And, um, basically, and -- and briefly, what is
8 the, um, DNA: STR method of typing?

9 A STR typing is a PCR-based system that allows us to
10 specifically amplify or make a whole lot of copies of
11 specific regions of DNA.

12 If you look at the, uh, photograph here,
13 there are target regions that -- that it -- are
14 interspersed throughout your DNA. These target
15 regions we refer to as STR or genetic markers.

16 When we develop a DNA profile, we
17 actually look at 15 different target regions of
18 DNA throughout the -- a person's entire DNA. So
19 our profile is developed from 15 different target
20 locations. We do this to the evidence sample as
21 well as the reference sample, and we basically
22 compare the two.

23 Q So, again, if you were to develop a -- Can you
24 develop a DNA profile from, like, a buccal swab
25 from an individual?

1 A Yes.

2 Q And -- and please explain to the jurors what is a
3 buccal swab?

4 A A buccal swab refers to swabbing that we do on the
5 inside of the cheek area. Um, some laboratories at
6 some point have used blood samples as a standard. We
7 currently use buccal swabs, which is swabbing of the
8 inside of the cheek as a standard sample so that
9 we'll know that those cells come from a particular
10 person and we'll be able to assign that particular
11 person, um, a profile.

12 Q And you can develop a DNA profile from that?

13 A Yes.

14 Q And if that person were to leave, shall we say,
15 their blood at a crime scene, can you develop a
16 DNA profile from the blood at the crime scene?

17 A Yes.

18 Q And then could you compare those two?

19 A Yes, we do.

20 Q So can you make a determination whether someone
21 may be the source of a biological substance at a
22 crime scene?

23 A Yes.

24 Q And is this DNA technology that you've just
25 talked about used in other fields besides law

1 enforcement and the forensic setting?

2 A Yes.

3 Q Could you explain just some of those for the
4 jurors?

5 A Um, the technology -- the PCR technology that this
6 system is based on is used in the medical com --
7 community quite frequently. It's used for a lot of
8 diagnostic testing, um, it's used to, uh, identify
9 individuals from mass disasters. Uh, I believe most
10 servicemen now, uh, give a DNA sample that is kept on
11 file. So there are lot of other applications.
12 This -- this type of technology is used in many other
13 applications besides forensics.

14 Q Now, in this case here, um, the case that we're
15 trying today, did you receive items of evidence
16 from law enforcement agencies to perform DNA
17 testing?

18 A Yes, I did.

19 Q And when law enforcement submits items to the
20 Crime Lab, do you generate some type of case
21 file?

22 A Yes, I do.

23 Q And could you just explain to the jurors how
24 you'll go about generating your case file?

25 A Any time evidence is brought into the laboratory, we

1 have, uh, individuals, referred to as evidence
2 specialists, they take the evidence from the
3 submitter, the police officer, or -- or agency, um,
4 and we have a -- a computerized bar coding system in
5 the laboratory that keeps track of all of this
6 evidence.

7 So anytime a piece of evidence comes
8 into the lab, we give it a yellow sticker with a
9 bar code on it that, um, is a designation of what
10 the -- the lab number is. So we give it a
11 numerical number.

12 Also, each item of evidence is also
13 given an item designation. So, for instance,
14 your number of the case, and then you'll have
15 items A, B, C, D, E. So all of that information
16 is, um, given to the items when they come into
17 the laboratory. It's put into our computer
18 system. All of that evidence is put into
19 storage, into our evidence storage, and remains
20 there until the analyst needs it to actually
21 examine the evidence.

22 All of the documentation, um, that we
23 generate for each case is kept in a case file.
24 So all of our information with chain of custody,
25 who took it in, what happened to it, plugs all of

1 the notes and all of the data that we generate
2 from our -- our analysis is kept in a case
3 jacket. And, um, that's the -- the case file
4 that's generated for each case.

5 Q And did you bring your case file with you today?

6 A Yes.

7 Q And do you need that to testify today?

8 A Yes.

9 Q And your file -- your case jacket, will that
10 indicate what items of evidence you received and
11 on what date?

12 A Yes, it will.

13 Q And will it also contain the dates that you
14 performed your analysis?

15 A Yes.

16 Q I'm going to ask Mr. Kratz, if he would, uh,
17 bring you a number of photographs, which I would
18 like you first just to take a look at, and then
19 I'll have a question for you when you've
20 completed looking at those.

21 A Yes.

22 Q Those photographs -- Uh, do you know who took
23 those photographs?

24 A I believe -- I believe they were taken in our
25 laboratory.

1 Q And that was -- And those are photographs of --
2 of Teresa Halbach's RAV 4; correct?
3 A That's correct.
4 Q And that was brought to your Crime Laboratory
5 from the, uh, Avery Salvage Yard; is that
6 correct?
7 A Yes.
8 Q Okay. And who is Ron Groffy?
9 A He's the, uh -- our -- uh, one of our im -- imaging
10 analysts, and he takes the photographs, uh, when we
11 process vehicles or when we need evidence, uh,
12 photographed.
13 Q And did he take those photographs?
14 A Yes.
15 Q And as you look at each of those photographs, do
16 they a -- appear to accurately depict, um, Teresa
17 Halbach's RAV 4 as it appeared when you first saw
18 it?
19 A Yes, I do.
20 Q Okay. I would like you, first, to look at
21 Exhibit 141? And --
22 A Yes.
23 Q -- um, would you, um -- And is it -- The
24 photograph that you have in your hand, is that
25 the same photograph that we have up on the

1 screen?

2 A Yes, it is.

3 Q Okay. And would you explain what that is?

4 A This is a photograph that -- it's taken in our, uh,
5 garage at the laboratory, and it is a picture of the,
6 uh -- Teresa Halbach's RAV 4 as it was in our
7 laboratory.

8 Q And when did you first see Teresa Halbach's RAV 4
9 in your lab?

10 A Uh, November 7, 2005.

11 Q And that would have been on Monday?

12 A Yes.

13 Q Okay. And what was your involvement at this
14 point on November 7?

15 A I was asked to, um, process the car for the presence
16 of blood or any biological materials.

17 Q And how did you go about doing that?

18 A The first thing we do -- Anytime we're processing
19 evidence, whether it's a -- a vehicle, or a piece of
20 clothing, the first thing we do is a visual
21 examination. And we, basically, just look at the
22 item of evidence to see if there's any obvious
23 stains. Um, we're looking for different biological
24 materials depending on what type of case it is and
25 what circumstances there were.

1 Q And did you find any blood stains in Teresa
2 Halbach's RAV 4?

3 A Yes. As I was processing the car, um, again, I was
4 just, basically, looking at the interior, and there
5 were numerous obvious stains that were consistent
6 with the appearance of blood stains.

7 Q And, um, did you perform any type of preliminary
8 tests on these -- what appear to be blood stains
9 in Teresa Halbach's car?

10 A Yes, I did.

11 Q And what preliminary tests would those be?

12 A Preliminary tests in the laboratory are tests that
13 are not specific for a biological material, but it
14 gives us a -- a good idea that what we're looking at
15 is, for instance, blood or semen. These are what we
16 refer to as presumptive tests. Um, they're not
17 confirming for blood, and they're certainly not
18 confirming for human blood, um, but when we get a
19 positive reaction, we know that we're probably
20 looking at a blood -- a blood stain and we need to
21 take it a little further. If we get a negative
22 reaction, then it's not blood and we're not -- we're
23 not going any further with the analysis.

24 Q And the, um -- And once you perform a preliminary
25 test and get a presumptive test, shall we say for

1 blood, then what would you do? What would be the
2 next step?

3 A If I got a positive reaction, then I would sample the
4 stain and retain that for further DNA testing. Uh,
5 in this particular case, when I, um, got a positive
6 preliminary test, then I sampled a portion of each
7 one of the stains that I looked at, um, on a cotton
8 swab. I moistened that with some sterile water, and
9 then I, basically, just swabbed the stain and removed
10 it, and that was retained for further DNA testing.

11 Q Just give me one moment here, Ms. Culhane. Ms.
12 Culhane, Mr. Kratz is going to hand you a number
13 of envelopes, and they -- each one has been
14 marked as an exhibit, and I would like you to
15 look at Exhibit No. 155, and could you identify
16 that for the jurors?

17 A Yes, I can.

18 Q And what is that?

19 A This is a, um, swab that was taken, uh -- my item
20 designation was A6, and this was a swab that was
21 taken from the RAV 4.

22 Q And I would like you at this point -- Would you
23 look at Exhibit 142? That would be the
24 photograph. Okay?

25 A Yes.

1 Q And, um, can you show the jurors on, um, this big
2 screen where it is that you collected this item
3 A6?
4 A A6 was collected from the, uh, front seat driver's
5 side portion of the -- the vehicle. Um, and it was
6 a -- a stain that I cut out of that area.
7 Q And that was a -- a blood stain; correct?
8 A Yes.
9 Q You had done your preliminary test on that?
10 A Yes.
11 Q I would like you now to look at Exhibit 156, and
12 could you explain to the jurors what that is?
13 A This is my item designation A7. Um, this was
14 collected -- These were some, uh, reddish/brown crust
15 material that was collected from this area right here
16 on the floor by the console.
17 Q And, again, that appeared to be a blood stain?
18 A Yes.
19 Q And what was the purpose of collecting that?
20 A Um, I did my preliminary test, and, eventually, um,
21 developed a DNA profile from that.
22 Q Now, you state that you give these an item
23 designation number. Explain that a little bit to
24 that? What you mean by your Crime Lab
25 designation number?

1 A Okay. The car -- the vehicle, itself, was given the
2 item designation of A. And everything that we
3 subsequently collected from the car, was numbered one
4 through however many samples we took. So this would
5 be referred to as A7. "A" telling me that it came
6 from the vehicle, and A7, uh, telling me exactly
7 where I recovered this item from.

8 Q And I would ask you to look at Exhibit 157, and
9 identify that for the jurors?

10 A This is my item designation A7, and this was a
11 reddish/brown stain that was collected from the right
12 of the ignition area in the vehicle.

13 Q Okay. Do you have Exhibit 157? Isn't that -- Is
14 that A8?

15 A Yes.

16 Q I thought you said -- Did you say A7?

17 A I didn't mean to, if I did. I mean A8.

18 Q Okay.

19 A Yes.

20 Q So Exhibit 157?

21 A Is Item A8.

22 Q Okay. And, again, what is that?

23 A Uh, that was a reddish/brown stain that was taken
24 right here to the right, uh, of the ignition. You
25 can see it here on the photograph.

1 Q And, um, would you look at Exhibit 143, which is
2 a photograph?
3 A Yes.
4 Q And is that -- The photograph you have in your
5 hand, is that the photograph that's up on the
6 large screen now?
7 A Yes, it is.
8 Q And, again, before you collected this blood stain
9 from the -- by the ignition switch, you performed
10 a preliminary test?
11 A Yes, I did.
12 Q It tested positive for blood?
13 A Yes.
14 Q And then you -- When you say, collected it, just
15 tell the jurors how did you go about collecting
16 it?
17 A I took a -- a cotton swab and moistened that with
18 some sterile water, and then I, basically, just
19 swabbed the area of the stain. That, uh, material is
20 then transferred to the cotton swab, and then when I
21 take that back to my lab bench to, uh, do my testing
22 on it, then I will cut the portion that has the
23 stained area on it and develop a DNA profile from
24 that.
25 Q I would like you now to look at Exhibit 158?

1 That would be an envelope. And explain what that
2 is?

3 A Yes. This is my, uh, item designation A9.

4 Q And, uh, where did you take that sample from?

5 A This was taken from the front passenger seat, and
6 this was a stain that was cut out of that area.

7 Q And would you correlate that for the jurors,
8 please, with Exhibit 144? That would be a
9 photograph you have in front of you?

10 A Yes. This is the same photograph that's on the
11 screen here. A9 was taken from this area right here.
12 It was cut out of the front passenger seat.

13 Q I would like you to look at another envelope,
14 which would be Exhibit 159, and tell and please
15 explain to the jurors what that is and where you
16 collected that?

17 A This is my item designation A10, and this was a
18 reddish/brown stain that was recovered from a CD
19 case, which was on the front passenger seat, and it's
20 right here.

21 Q And, now, finally, would you look at Exhibit 160?
22 That will be a envelope? And would you correlate
23 that with the photograph, Exhibit 145, and tell
24 the jurors where you got that from?

25 A This is my item designation A12, and this was also a

1 reddish/brown stain that was found in this -- uh, on
2 this metal panel here, um, between the backseat and
3 the cargo area of the RAV 4. Uh, it was recovered
4 from this area right here.

5 Q Now, did you perform DNA testing on each of these
6 swabs and each of these cuttings that you've just
7 described for the jurors?

8 A Yes, I did.

9 Q And were you able to develop a DNA profile from
10 each of those items?

11 A Yes.

12 Q Now, did you awful -- also have a buccal swab
13 from an individual by the name of Steven Avery?

14 A Yes, I did.

15 Q And, once again, what is a buccal swab?

16 A That is a swabbing of the inside of -- the cells on
17 the inside of your cheek.

18 Q And is that referred to as a standard?

19 A Yes.

20 Q And why is a standard necessary in DNA testing?

21 A Because in order to compare an evidence sample, or a
22 question sample, to someone, a person, you need a
23 reference sample. You need to know what a particular
24 person's, um, DNA profile is. So we use a reference
25 standard. We know it comes from a particular person

1 and we can develop a profile from that and compare
2 that to the evidence.

3 Q And did you develop a DNA profile from the buccal
4 swab of one Steven Avery?

5 A Yes.

6 Q And I'm going to show you, on the PowerPoint
7 demonstration, a slide, and ask if your -- does
8 this slide correctly display your findings of
9 your testing of the buccal swab of Steven Avery?

10 A Yes, it does.

11 Q Would you explain to the jurors what -- what this
12 slide means?

13 A Earlier, when I was talking about the STR markers, or
14 genetic markers, and I told you that, uh, the PCR
15 process amplifies or makes a lot of copies of 15
16 different markers, these series of numbers and
17 letters on this side are actually, um, designations
18 of where those markers are found throughout the DNA.
19 So it -- it tells me a specific location of this
20 marker. Where it's found.

21 These numbers on this side reflect the
22 size of that target region of DNA that we're
23 amplifying at that particular location. So, in
24 other words, at this location, D-3, Steven -- the
25 sample from Steven Avery had two fragments of

1 DNA, size 16 and size 18. And the entire DNA
2 profile -- This is what we use, these numbers and
3 fragment sizes, that's what we use to actually
4 compare to the evidence sample.

5 Q And the example you just gave, where Mr. Avery
6 was a 16, comma, 18 at D-3, are there other
7 possible numbers at that location that one could
8 be?

9 A Yes.

10 Q Do you know how -- what the range of numbers it
11 could be?

12 A Um, at that particular location, I believe it starts
13 at around 11, up to, maybe, in the 20's. So there
14 are numerous fragment sizes at that particular, uh,
15 location.

16 Q But here, at that location, Mr. Avery happened to
17 be a 16, comma, 18.

18 A Yes. And at each different location, there are many
19 choices, several choices, of fragment sizes at each
20 one of those markers.

21 Q Now, did you compare this profile that you
22 obtained from Steven Avery's buccal swab with the
23 DNA profiles that you developed from the blood
24 stains in Teresa Halbach's RAV 4?

25 A Yes, I did.

1 Q And I'm going to put up another slide now and
2 ask, uh, does this slide accurately show your
3 findings?
4 A Yes, it does.
5 Q Now, in this slide we just did, um, we put up for
6 A10 -- I'm sorry, A8, A10, and A12. And, again,
7 A8 was a blood stain found where?
8 A By the ignition.
9 Q A10?
10 A On the CD, uh, case.
11 Q And A12?
12 A Was found on the metal panel between the rear seat
13 and the cargo area.
14 Q And the DNA profile that you developed from each
15 of those blood stains, please explain to the
16 jurors how that profile compared to Steven Avery?
17 A You can see by the numbers that it's -- it's
18 consistent all the way throughout. So at each one of
19 these markers -- Um, the evidence sample was a 16,
20 18. Steven Avery was a 16, 18.
21 At this marker, THO-1, um, the evidence
22 sample was 9.3. Steven Avery was 9.3. So he's
23 con -- These evidence samples are consistent with
24 his profile throughout all the 15 markers.
25 Q And is there any way in your testing process you

1 can tell whether it's a male or a female who
2 leaves a, uh, biological substance?

3 A Yes, it is.

4 Q And how do you do that? The last marker that we
5 used is referred to as amelogenin. And it's a
6 gender marker. Um, if you are a female, you're
7 only going to have an "X" chromosome. If you are
8 a male, you're going to have an "XY" chromosome.

9 So you can see that both the evidence
10 sample and Steven Avery both have an XY, so that
11 tells me that's DNA from a male.

12 Q Now, you also developed a DNA profile from the
13 other blood stains that you found in the
14 passenger compartment; correct?

15 A Yes.

16 Q That would be A6, A7, and A9?

17 A Yes.

18 Q Okay. And did you develop similar profiles with
19 Steven Avery as you did with A10, 8 and 12?

20 A Yes, I did.

21 Q Okay. Do you have an opinion to a reasonable
22 degree of scientific certainty whether Steven
23 Avery was the source of, uh, those blood stains
24 that you found in the passenger compartment of
25 Teresa Halbach's RAV 4?

1 A Yes, I do.

2 Q What is that opinion?

3 A Uh, it is my opinion that Steven Avery is the source
4 of the evidence samples that -- as they're
5 illustrated right here.

6 Q Now, I'm going to ask Mr. Kratz to bring you up,
7 and -- what has previously been marked as Exhibit
8 94 -- and, um, this has been described as a -- a
9 swab which was taken from the release lever of
10 the hood latch of Teresa Halbach's RAV 4. And
11 did you receive that as evidence?

12 A Yes, I did.

13 Q And how can you tell that you received it?

14 A Um, again, this is an example of, uh, our be -- our
15 system that -- our computer tracking system. This is
16 a label with the lab number on it, and the item
17 designation is ID. That's our item designation with
18 a bar code that keeps track of that. These are my
19 initials, and when I received it, and, um, a seal
20 across the back with my initials when the evidence
21 was opened.

22 Q And did you, um -- When you received that swab of
23 the hood latch, what did you do with that?

24 A Uh, in this particular case, um, I did a visual exam
25 of it. Uh, there was no visible staining that was

1 consistent with blood or anything. And so I, uh,
2 took the swab, I cut a portion of the swab, and
3 simply began my extraction for DNA.

4 Q And did you assign a Crime Lab item designation
5 to that?

6 A Yes.

7 Q And what was that item designation?

8 A ID.

9 Q And were you able to develop a DNA profile from
10 the swab of the hood latch of Teresa Halbach's
11 RAV 4?

12 A Yes, I did.

13 Q And I'm going to ask if the slide that we have
14 put up before the jury, whether this correctly
15 displays your findings for the DNA profile from
16 the hood latch?

17 A Yes, it does.

18 Q And, again, briefly just explain it to the jurors
19 what that is?

20 A Again, these are the -- all the 15 different genetic
21 markers, or STR markers, the locations throughout the
22 DNA, and these are the size of the fragments that
23 were developed from the evidence sample.

24 So in this case, they were fragments
25 that were developed from Item ID, which was the

1 hood latch.

2 Q And did you compare that DNA profile with the DNA

3 profile that you developed from the buccal swab

4 of Steven Avery?

5 A Yes, I did.

6 Q And does this slide correctly display your

7 results?

8 A Yes, it does. And, again, you can see that, um, the

9 profile that was developed from the hood latch is,

10 uh, consistent all the way throughout the markers

11 with Steve Avery's sample.

12 Q And do you have an opinion to a reasonable degree

13 of scientific certainty whether Steven Avery is

14 the source of the DNA which was found on the hood

15 latch of Teresa Halbach's RAV 4?

16 A Yes, I do.

17 Q What is that opinion?

18 A Uh, that Steven Avery is the source of the DNA that I

19 developed from the swab of the hood latch.

20 Q And I would like you now to see Exhibit 131,

21 which has been previously identified as, um, the

22 Toyota key, which was found in the trailer of

23 Steven Avery. I'm sorry, if Mr. Wiegert could

24 locate that for you. And that has been

25 previously marked as Exhibit 131, and, uh, can

1 you identify that for the jurors?

2 A Yes, I can. Uh, this is a Toyota key, um, that I
3 swabbed and recovered DNA from. The key was found --
4 This is a photograph of the key and it was found to
5 fit the Toyota, uh, RAV 4.

6 Q And did you, yourself, put that key in the
7 igni -- ignition switch of the RAV 4?

8 A Yes, I did.

9 Q And what happened when you put it in?

10 A Uh, when I put the key in and -- it turned completely
11 over, but the engine, uh, did not actually start.
12 Uh, but it did turn it over and it opened the doors
13 of the vehicle.

14 Q And did you perform DNA testing on, uh, that key?

15 A Yes, I did.

16 Q And could you explain for the jurors what you did
17 with that key when you first received it?

18 A Uh, when I first received it, um, I simply took the
19 key, I did a visual examination. Uh, there was
20 nothing -- There were no visible stains that I could
21 see. So I took a swab and I swabbed the edges of the
22 key, this portion of the key, and both sides of
23 the -- of the key. Um, the swab, itself, after I did
24 that swabbing, was not discolored, so there was no
25 indi -- no visual indication that there was any blood

1 or anything, uh, that I could see on the key. Um,
2 and then I took that swab, and I, um, um did a DNA
3 extraction and developed a profile from that.

4 Q And I'm going to ask you to inform the jurors
5 whether this slide adequately or correctly
6 displays your findings of your testing of the
7 Toyota key?

8 A Yes, it does.

9 Q And the DNA profile that you developed from the
10 Toyota key, did you compare that to the DNA
11 profile of Steven Avery?

12 A Yes, I did.

13 Q And does this slide correctly display your
14 findings?

15 A Yes, it does.

16 Q And, again, would you just explain to the jurors
17 what this shows?

18 A Again, this is, uh, the profile from the evidence
19 sample, which is a swabbing of the Toyota key. And
20 it's consistent throughout with the DNA profile
21 developed from, uh, the buccal swab of Steven Avery.

22 Q Do you have an opinion to a reasonable degree of
23 scientific certainty whether Steven Avery is the
24 source of the DNA that was found on the swabbing
25 of the Toyota key?

1 A Yes.

2 Q And what is that opinion?

3 A Um, my opinion is that he is the source of the
4 swabbing -- uh, the DNA from the swabbing of the key.

5 Q Ms. Culhane, I would like to now, um, shift back
6 to the processing of the RAV 4, and you found
7 other blood stains in that RAV 4; isn't that
8 correct?

9 A Yes.

10 Q Did you also look into the rear cargo area of the
11 RAV 4?

12 A Yes, I did.

13 Q And did you find blood stains there?

14 A Yes.

15 Q There was also another item that was in the
16 passenger compartment, and that was a Wild Cherry
17 Pepsi can; is that correct?

18 A Yes.

19 Q And I'd like to go back to, um -- And can you
20 point out for the jurors where you found this
21 Wild Cherry Pepsi can?

22 A Yes. I recovered it from the console area where the
23 opening is to put a can or something. Um, and there
24 was -- the soda can was right here, and that's where
25 I recovered it from.

1 Q And I'm going to ask Mr. Kratz to bring you up
2 Exhibit 161, and ask if you recognize that
3 exhibit?

4 A Yes, I do. This is the Pepsi can that I recovered
5 from the RAV 4. Um, again, it has, uh, our
6 laboratory, um, item designation and lab number on
7 it, and my item designation was A14.

8 Q And it -- That bag contains the actual Pepsi can?

9 A Yes, it does.

10 Q And how did you process that Pepsi can?

11 A At the time when I found, um, the can, I was, um,
12 trying to -- I -- I, basically -- There was nothing
13 visible on the can. There was no stains or anything
14 like that. So I was trying to determine who may have
15 drank out of the can. So I swabbed the opening
16 where -- if you were drinking, where your mouth would
17 touch, and that's -- that's what was the swabbing and
18 that's what I processed for DNA.

19 Q I'm going to ask Mr. Kratz to hand you some
20 additional photographs. I'd like you to take and
21 look at those first. Those are Exhibits 146,
22 147, 4 -- 148, 149, I believe; is that correct?

23 A Yes.

24 Q Okay. And, again, are those photographs of areas
25 of Teresa Halbach's SUV?

1 A Yes, they are.

2 Q And, again, were those taken by Ron Groffy, your
3 photographer at the Crime Lab?

4 A Yes.

5 Q And I'm also going to ask, um, you to identify a
6 few other exhibits. I'm going to ask Mr. Kratz
7 to hand you four additional envelopes. What I'd
8 like you to do is to look at the first, um,
9 envelope. I believe it is, um, 151?

10 A Yes.

11 Q And what is that?

12 A Um, this is a -- a sample that was recovered by me
13 from the vehicle. Um, and it was my item designation
14 A1.

15 Q And would you please look at Exhibit 146? It's a
16 photograph. And, uh, is that photograph being
17 shown on the big screen now?

18 A Yes, it is.

19 Q And your item designation, A1, can you show the
20 jurors, uh -- First of all, that was a blood
21 stain that you located?

22 A Yes.

23 Q Show them where you located that blood stain?

24 A Okay. This was -- It was a -- a fairly large stain
25 right here in this area up against this wheel well.

1 Q I'm going to, uh, ask you to look, um, at another
2 photograph, which is Exhibit 147? Which is a
3 close-up of that area. And, again, could you
4 just point out to the jurors where you took your
5 DNA sample from?

6 A Right in here.

7 Q And, again, would --

8 A You can see the stain here.

9 Q And could you just describe for the jurors the
10 size of that stain and how it appeared to you?

11 A Um, it was a fairly large stain. I don't know the
12 exact measurements, but maybe six inches long or so.
13 Um, and it was a fairly substantial stain, so I only
14 collected a small portion of -- the portion that I
15 would need for my examination.

16 Q I would now ask you to look at, please, Exhibit
17 152, and can you describe that for the jurors?
18 What that is?

19 A This is also a -- a reddish/brown stain that I
20 recovered from the vehicle. Um, it's my item
21 designation A2.

22 Q And I would like you to correlate that with
23 Exhibit 148, which would be a photograph?

24 A Yes.

25 Q And could you show the jurors where it was that

1 you located A2?

2 A Right here along this plastic, um, threshold here

3 into the -- This is the cargo area of the RAV 4. So

4 right along this plastic piece right here.

5 Q And did that appear to be blood to you?

6 A Yes.

7 Q Did you perform preliminary tests on these stains

8 also?

9 A Yes.

10 Q And did they show positive for blood?

11 A Yes.

12 Q I would ask that you now look at Exhibit 153, an

13 envelope? And, uh, at least inform the jurors

14 what that is?

15 A This is also, um, a reddish/brown stain that was

16 recovered by myself from the, uh, cargo area of the

17 RAV 4, and my item designation was A3.

18 Q And -- and -- and where did you locate that on?

19 On where?

20 A That was on the, um, door. The actual door that you

21 open of the cargo area. Right here.

22 Q Would you correlate that with, um, Exhibit 149,

23 the photograph you have?

24 A Yes. This is the same photograph that's on the

25 screen there and my sample was taken from this area

1 right here.

2 Q And did you perform preliminary blood tests for
3 that?

4 A Yes, I did.

5 Q And that stain proved positive for blood?

6 A Yes.

7 Q Now, I'd like to go back to, um, the previous
8 slide, and I'd like to talk about, um, Exhibit
9 153, now. I'm sorry. Would you look at -- If --
10 Would -- would -- would -- This is Exhibit 148?
11 Is the photograph; correct? And I'm looking
12 for -- And Exhibit 154?

13 A Yes.

14 Q Okay. And do those correlate? Can you correlate
15 those for the jury?

16 A Yes. Um, A4 is also a reddish/brown stain that I
17 took from the rear cargo area. And Exhibit 148 is a
18 photograph, um, and I took it from the metal -- this
19 metal piece right here along the -- the opening, um,
20 in the -- this area. Approximately this area here.

21 Q And did you perform DNA testing on each of these
22 four swabs that you took from the rear cargo area
23 of the RAV 4?

24 A Yes, I did.

25 Q Now, did you also have a standard DNA sample from

1 Teresa Halbach?

2 A Yes, I did.

3 ATTORNEY GAHN: Your Honor, I had, uh,
4 spoken with Mr. Fremgen previously, and he has
5 agreed that he will stipulate that in the year
6 2002, a pap smear was taken from Teresa Halbach
7 at the Bellin Hospital in Green Bay, Wisconsin,
8 and that that pap smear was retrieved by law
9 enforcement officers and taken to the Crime Lab
10 to use as a standard.

11 THE COURT: Is that correct?

12 ATTORNEY FREMGEN: Yes, Judge.

13 THE COURT: All right.

14 Q (By Attorney Gahn) And can you just, uh -- What
15 is a pap smear?

16 A A pap smear is a medical test where, uh, cells from
17 the cervical area of a woman are collected and those
18 are used to make, uh, medical diagnostics.

19 Q And is it okay to use a pap smear as a standard
20 for DNA testing?

21 A Yes. Any nucleated cell from a particular person can
22 be used as a standard. We normally use buccal cells
23 because it's easy to collect and convenient. In this
24 case, that wasn't, uh, available. So the, uh, pap
25 smear -- the cells from the pap smear were perfectly

1 fine.

2 Q And did you develop a DNA profile from the pap
3 smear of Teresa Halbach?

4 A Yes, I did.

5 Q And I'm going to ask you to look at this slide,
6 and, uh, does this correctly display the DNA
7 profile that you obtained from the pap smear of
8 Teresa Halbach?

9 A Yes, it does.

10 Q And, again, would you explain a little bit about
11 this to the jurors?

12 A Um, again, these are the 15 markers that we're
13 looking at. You can see this is a little different
14 from the last profiles because this is from a female.
15 So there's only an X chromosome and not an XY. And,
16 also, um, the types are quite different. Some of the
17 types are the same, but if you take the entire
18 profile in its entirety, um, it's quite different
19 from the, uh, profiles that we just looked at.

20 Q And did you compare this profile from the pap
21 smear of Teresa Halbach with the DNA profiles
22 that you developed from the rear cargo area?
23 Namely, the blood stains in A1, A2, A3, A4, as
24 well as the DNA profile from the Pepsi can?

25 A Yes.

1 Q And I'm going to ask you to inform the jurors
2 whether this slide correctly displays the DNA
3 profile that you developed from those items?
4 A Yes, it does.
5 Q And did you compare the DNA profile from the
6 blood stains in the rear cargo area of Teresa
7 Halbach's car, and from the Pepsi can, with the
8 pap smear of Teresa Halbach?
9 A Yes, I did.
10 Q And I'm going to ask if this slide correctly
11 displays your findings?
12 A Yes. And, again, you can see that the profile from
13 the questioned evidence here, and the profile from
14 Teresa Halbach, is consistent throughout all the 15
15 markers.
16 Q And do you have an opinion to a reasonable degree
17 of scientific certainty whether Teresa Halbach is
18 the source of the DNA from those blood stains in
19 the rear of -- the cargo area of the RAV 4?
20 A Yes, I do.
21 Q And what is that opinion?
22 A Uh, my opinion is that the profiles from the evidence
23 samples, um, are consistent with Teresa Halbach and
24 that she is the source of that DNA.
25 Q And -- and, also, do you have an opinion whether

1 she's the source of the DNA that you found on
2 your swabbing of the Wild Cherry Pepsi can?

3 A Yes, she is.

4 Q I'm going to put a -- a slide up now. Um, and
5 I'm also going to be asking Mr. Kratz to bring
6 you a photograph for you to identify. And what
7 is the exhibit number on that?

8 A One-fifty.

9 Q One-fifty? And can you, um, describe -- What
10 does that photograph show?

11 A This is a photograph of a -- a bone fragment with
12 some, um, burned, charred tissue attached to it.

13 ATTORNEY GAHN: And, once again, Your
14 Honor, um, I had spoken with Mr. Fremgen earlier,
15 and, um, we do have this as a piece of charred
16 remains that was found in the burn pit. Um,
17 these charred remains are with the Calumet County
18 Sheriff's Department, and Mr. Fremgen stated that
19 we did not have to produce this item here in
20 court today, and that the photograph would be
21 fine for identification.

22 THE COURT: Mr. Fremgen, is that correct?

23 ATTORNEY FREMGEN: That's correct.

24 THE COURT: All right.

25 Q (By Attorney Gahn) And, again, would you

1 describe what this item -- Did you receive this
2 item in the Crime Lab? From the Crime Lab?

3 A Yes, I did.

4 Q And what was it that you received? Please
5 describe what this is?

6 A Um, this is a -- a bone fragment here with a piece
7 of, um, charred tissue attached to it. When I
8 sampled this, I took a portion of -- of the tissue
9 that was, uh, least -- appeared to be least burned,
10 uh, towards the bone and that's what I used for my
11 examination.

12 Q And did you assign a Crime Lab item designation
13 to this?

14 A Yes, I did.

15 Q And what was that?

16 A Item BZ.

17 Q And did you conduct DNA testing on this tissue
18 portion of this burned bone fragment?

19 A Yes, I did.

20 Q And were you able to develop a DNA profile from
21 this piece of charred remains?

22 A Yes, I was.

23 Q And I'm going to put a slide up and ask you to
24 explain, uh -- Firstly, does this accurately
25 display the findings of your DNA testing on these

1 charred remains?

2 A Yes, it does.

3 Q And would you explain to the jury what your
4 findings were for the charred remains?

5 A Um, you can see that I tested for each of the 15
6 markers that I've been talking about. But I did not
7 get results, um, from all 15. The markers with
8 numbers by them are the ones that I got results for.
9 So there were seven markers that I actually got a
10 type from. Um, and, again, I got a -- a gender
11 marker telling me that it was from a female.

12 Q And is this what the scientists refer to as a
13 partial profile?

14 A Yes.

15 Q Is it unusual to get a partial profile from a
16 sample such as this?

17 A No, it's not.

18 Q Explain to the jurors why?

19 A Uh, this sample was -- obviously been compromised
20 and, um, exposed to heat. Uh, there are a lot of
21 things that will, uh, work to break down or degrade
22 DNA, and heat is one of them. Um, and, basically,
23 what it does is just chews up the DNA.

24 So on the markers that have larger
25 fragments, uh, you're not going to get any

1 results in most cases. These are -- The D5, D13,
2 D7, D3, those are all smaller markers, so the
3 fragments are smaller, and so you have a better
4 chance of getting, uh, results from those
5 particular markers.

6 Q Now, the prior charts that we looked at, where
7 you showed the profile of Teresa Halbach and the
8 DNA profiles you developed from the blood in the
9 rear cargo area of the RAV 4, those are what you
10 would call complete or full profiles; correct?

11 A Yes.

12 Q And this, here, is what's called a partial
13 profile?

14 A That's correct.

15 Q Now, for the complete profiles, I asked you a
16 question whether Teresa Halbach was the source
17 of, um, the blood in the rear cargo area of the
18 RAV 4; correct?

19 A Correct.

20 Q And you were able to state, yes, Teresa Halbach
21 was the source?

22 A Correct.

23 Q Can you say that Teresa Halbach is the source of
24 this, uh, DNA profile that you found?

25 A No.

1 Q Now, you did compare it to Teresa Halbach's pap
2 smear; correct?

3 A Yes, I did.

4 Q And does this show your results?

5 A Yes. And, again, all of the markers that I did get
6 results for are -- are consistent with the types of
7 Teresa.

8 Q Now, why can't you state that Teresa is the
9 source of this profile?

10 A When we -- Anytime we develop a DNA profile, we do a
11 statistic analysis. And the purpose of that is for
12 us to det -- determine how common or how rare the
13 entire profile is in the general population. So we
14 have statistic numbers that reflect how common or how
15 rare each one of these types is, each -- at each one
16 of these markers is, within the population.

17 In order to get a -- a composite number
18 that reflects the entire profile, we multiply
19 these numbers together and that tells us how
20 common or how rare the entire profile is in the
21 population.

22 As a matter of laboratory policy,
23 anything -- any profile that is rarer than three
24 times the world's population, which would be six
25 trillion, we, um, refer to that as a source

1 attribution, so we're able to say, any profile
2 that's rarer than that is consistent, and that
3 person is the source of that profile.

4 Now, because this was a partial profile,
5 the numbers are not that high. Um, and that's
6 why I could not attribute it to Teresa.

7 Q And this is a laboratory policy based upon world
8 population?

9 A Correct.

10 Q Okay. However, were you able to, uh, generate a
11 statistic to tell how rare or how common this
12 profile would be in the general population?

13 A Yes, I was.

14 Q And what is that statistic?

15 A Um, one person in one billion in the Caucasian
16 population. One person in two billion in the African
17 American population, and, also, in the Southeastern
18 Hispanic population. And one person in three billion
19 in the Southwestern Hispanic population.

20 Q And what does that statistic mean? What does
21 this mean?

22 A Uh, when we -- When we calculate these statistics, we
23 use a database of individuals that's maintained by
24 the FBI, and it's the same database that's used in
25 most crime labs throughout the country. And each one

1 of those DNA types is assigned a specific frequency.
2 It tells you how -- how often that occurs in the
3 population.

4 So, in the first one, one person in one
5 billion, I would expect to find that partial
6 profile from the evidence sample. I would expect
7 to find that if -- one time in one billion
8 instances in the Caucasian population.

9 Q So it's a very rare statistic; correct?

10 A Correct.

11 Q Are there more than a billion people in the state
12 of Wisconsin.

13 A I don't think so.

14 Q In any event, Teresa -- the charred remains that
15 were found in the burn pit, um, those, uh,
16 matched Teresa Halbach at a -- a number of
17 genetic locations?

18 A Yes.

19 Q I believe there were seven genetic locations?

20 A Correct.

21 Q And that was a complete match; correct?

22 A Correct.

23 Q And I'm going to ask you now to look at one more
24 exhibit -- uh, two more exhibits -- and that
25 would be, um, Exhibit -- what has previously been

1 marked as Exhibit 113, and described as a bullet
2 fragment that was found in the garage of Steven
3 Avery. And can you identify that exhibit for us,
4 please?

5 A Yes. Uh, this is a bull -- bullet fragment that I
6 examined. Um, it's my item designation FL.

7 Q And when you received that bullet fragment, how
8 did you process that?

9 A This was a very small bullet fragment. Um, I was
10 interested in -- in trying to determine if I could,
11 uh, find any DNA on the bullet fragment. I visually
12 looked at it. There were no visual stains like blood
13 or anything that I could see.

14 So I took the bullet fragment, itself,
15 put it into a test tube, and washed the surface
16 of it with, um, the reagents that we use to
17 extract DNA. So, basically, I was trying to wash
18 off all the DNA that was actually on the surface
19 of the bullet fragment. And I took that washing,
20 and that's what I did -- uh, that's what I
21 processed for DNA.

22 Q And were you able to develop a DNA profile from
23 that washing?

24 A Yes.

25 Q And does this slide correctly display the DNA

1 profile that you developed from Item FL, the
2 bullet, which was found in Steven Avery's garage?

3 A Yes, it does.

4 Q And did you compare that DNA profile to the
5 profile of Teresa Halbach that you developed from
6 her pap smear?

7 A Yes, I did.

8 Q And does this slide adequately or correctly
9 display your findings?

10 A Yes, it does.

11 Q And, um, do you have an opinion to a reasonable
12 degree of scientific certainty whether Teresa
13 Halbach is the source of the DNA that was found
14 on the bullet, Item FL?

15 A Yes, I do.

16 Q And what is that opinion?

17 A That the profile from the bullet fragment, FL, was
18 consistent with Teresa and, um, she is the source of
19 the DNA that was recovered from the bullet fragment.

20 ATTORNEY GAHN: At this time I would
21 like to move into evidence Exhibits 141 through
22 161? Is that correct? I believe?

23 THE COURT: Yes. Her CV is in -- Her CV is
24 in at -- at 164.

25 ATTORNEY GAHN: And -- and Exhibit 164,

1 yes.

2 THE COURT: Counsel, any objections?

3 ATTORNEY FREMGEN: No.

4 THE COURT: All right. Those exhibits are
5 received.

6 ATTORNEY GAHN: I have no further
7 questions.

8 THE COURT: Uh, let's take a break. We'll
9 take a 15-minute break at this time, ladies and
10 gentlemen. We'll be back in 15 minutes.

11 (Recess had at 10:33 a.m.)

12 (Reconvened at 11:01 a.m.)

13 THE COURT: Mr. Fremgen, cross?

14 ATTORNEY FREMGEN: Thank you, Judge.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY FREMGEN:

17 Q Ms. Culhane, I'm not going to ask you anything
18 about your qualifications. I think they seem to
19 be fine. Seems that you have significant
20 experience in DNA matching, as well as, uh,
21 developing profiles. Fair to state?

22 A Um-hm. Yes.

23 Q Now, in this case, you also had to prepare a
24 profile of Brendan Dassey's DNA; correct?

25 A Correct.

1 Q And suffice it to say, same procedure you went
2 through with Attorney Gahn and how you, uh,
3 developed Steven Avery's profile, as well as, to
4 some extent, Teresa Halbach's profile, the same
5 procedure you followed with Brendan Dassey?

6 A Correct.

7 Q And other members of the family as well; correct?

8 A Yes.

9 Q You had a number of profiles to develop?

10 A Yes.

11 Q When you spoke about matching with potential
12 biological evidence, again, we're talking about
13 sweat, for instance?

14 A Yes.

15 Q Possibly?

16 A Correct.

17 Q Saliva?

18 A Yes.

19 Q Um, semen?

20 A Correct.

21 Q And, obviously, blood?

22 A Yes.

23 Q And, at times, you mentioned there was no blood,
24 yet able to develop a DNA profile, and that's
25 from some other form of -- as you put it, some

1 other form of biological transfer from the
2 person? A cell transfer, I think, you referred
3 to it as?

4 A Yes. Anytime, uh -- It would have been from some
5 type of nucleated cell that was present on that item
6 of evidence.

7 Q Now, obviously, the same, uh, procedures were
8 used, then, when you developed profile on, for
9 instance, a swab that you took from the RAV 4 to
10 match with a known person?

11 A Correct.

12 Q Do you recall seeing this item before?

13 A Yes, I do.

14 Q And -- and I believe that would be -- Was it your
15 designation DD?

16 A Yes.

17 Q And I believe it's Exhibit -- The exhibit number
18 is on there?

19 A One twenty-nine.

20 Q Okay. Did you have an opportunity to not just
21 determine whether or not you could obtain a DNA
22 or some sort of -- of profile from some source,
23 you actually swabbed it yourself? The gun?

24 A Yes, I did.

25 Q Did you swab the trigger?

1 A Yes, I swabbed the -- the trigger area and the
2 trigger guard here, and, also, the area around the
3 barrel. The end of the barrel.

4 Q Now, specifically, as to the end of the barrel,
5 were you looking, also, for blood on the end of
6 the barrel?

7 A Yes.

8 Q Did you find any blood on the end of the barrel?

9 A No.

10 Q And you did that from first visually observing
11 the end of the barrel?

12 A Yes.

13 Q And then did you do a -- a swab to determine if,
14 possibly, it would react to something that would
15 be positive for blood?

16 A Yes, I did.

17 Q And that was negative.

18 A Negative. Yes.

19 Q But that doesn't end your examination; correct?

20 A Correct.

21 Q You also did a separate swab to determine if,
22 possibly, there's some other sort of fluid on the
23 end of the barrel that might create a profile?
24 DNA profile?

25 A Correct.

1 Q And so you did the same thing?

2 A Yes. I swabbed the barrel area and also this trigger

3 guard.

4 Q And unable to develop any sort of DNA from that

5 firearm?

6 A No, I did not develop a profile.

7 Q Okay. And, specifically, did you provide it --

8 any profile that matches Brendan Dassey; correct?

9 A Well, I didn't develop a profile at all.

10 Q At all?

11 A Yeah.

12 Q I'm going to have Attorney Edelstein put up on

13 the screen, using an ELMO, it's, uh, Exhibit No.

14 45. Can you see that from -- Oh, you have it on

15 that screen, too. Okay. So you can see Exhibit

16 45 on the screen?

17 A Yes.

18 Q And, again, does that -- that appears to be a

19 license plate; correct?

20 A Correct.

21 Q Do you recognize that license plate as something

22 that you looked at at the Crime Lab?

23 A Yes.

24 Q And, again, did you attempt to devel -- develop

25 some sort of a DNA profile, from something that

1 might be biological, transferred onto this plate?

2 A Yes. When I was examining this plate -- This is the
3 same license number that I have in my notes. Um, I
4 was primarily looking -- There was no visible stains
5 that were consistent with blood or anything like
6 that. So I was primarily looking for DNA that might
7 have been transferred when someone touched it.

8 So I, uh -- For my sample, I swabbed
9 around the, um, edge -- excuse me -- uh, the
10 edges, um, of the item, and -- with a cotton
11 swab -- and that's what I extracted.

12 Q And you were unable to develop any profile;
13 correct?

14 A Correct.

15 Q I'm now going to have Attorney Edelstein put on
16 the screen for us Exhibit 107.

17 ATTORNEY FREMGEN: Is there a way to put
18 it in more focus or closer up? Ray's the
19 technologically, uh, limited. There you go.
20 Okay.

21 Q (By Attorney Fremgen) Do you see what -- Well,
22 do -- You -- you see the picture, obviously, on
23 the screen?

24 A Yes.

25 Q In that picture, there's something that says

1 Black Jack?

2 A Correct.

3 Q Have you seen that before?

4 A Yes.

5 Q And referred to as a creeper?

6 A Yes.

7 Q Correct? Okay. And you actually had an

8 opportunity to -- to attempt to extract some sort

9 of, again, biolog -- determine whether there was

10 any biological, uh, fluid or something on this

11 creeper that you might be able to develop a DNA

12 profile; correct?

13 A Uh, in this instance -- On this item of evidence, I

14 was simply looking for the presence of blood,

15 apparent blood stains. And I examined it, and, um,

16 it was negative.

17 Q And when you do that, again, you first did a

18 visual examination?

19 A Yes.

20 Q And then after that, since we're -- our eyes

21 aren't always perfect, you, again, took a swab

22 of -- of somewhere on the creeper, and used a --

23 a chemical to determine the existence, if

24 possible, of blood; correct?

25 A Yes.

1 Q Did you swab in just one spot or did you try
2 to --
3 A I'll have to look at my notes to see exactly.
4 Q That's fine.
5 A Okay. Yes. In my notes, there were numerous
6 brownish stains, um, that were on different areas on
7 the creeper, and I, um, uh, checked them all for the
8 presumptive test for blood, and they were all
9 negative.
10 Q In your -- in your notes, or in -- in your
11 report, you indicate two, uh, identification
12 numbers for the creeper? A GG and GH?
13 A Correct.
14 Q Was it two separate pieces?
15 A Yes. It's two different creepers.
16 Q Two different creepers?
17 A Yes.
18 Q So on both, the -- neither one noted the
19 existence of any blood?
20 A Correct.
21 Q Now, I'm going to have Attorney Edelstein place
22 on the ELMO, this is exhibit -- This is
23 photograph, I believe it's Exhibit No. 82.
24 State's Exhibit 82. Do you recall examining a
25 wooden headboard at the Crime Lab?

1 A Yes.

2 Q Does it appear to be the wooden headboard on this
3 picture, Exhibit No. 82?

4 A Yes, it does.

5 Q And -- And it wasn't just the headboard you
6 examined; correct?

7 A Um, I examined -- Some swabs were taken by someone
8 else, and those were submitted. I examined those,
9 and then I, in addition to that, examined the
10 headboard.

11 Q Did you actually, again, start with determination
12 of whether there was blood on the headboard?

13 A Yes. I did a visual examination to see if any
14 stains, uh, were consistent with the appearance of
15 blood, and then -- there were different types of
16 various stains, um, which I checked with the
17 presumptive test, and they were all negative.

18 Q So no blood on the headboard?

19 A Correct.

20 Q And on the swabs of the headboard, or spindles,
21 that you -- that someone else had, uh, taken, but
22 you tested?

23 A Right.

24 Q No blood?

25 A Correct.

1 Q Were you able to develop any sort of DNA -- DNA
2 profile from the headboard or those swabs?

3 A Uh, no. I -- Um, the headboard, itself, I didn't
4 actually take any swabs myself, because there was
5 nothing that looked like blood. Um, the swabs from
6 the headboard I will have to check and see if I
7 actually extracted those. No. Those were not
8 extracted. They were all negative, um, for any
9 blood. So I didn't go any further with them.

10 Q Now, is there a reason why you didn't want to
11 determine if there was any sort of biological
12 fluid that might provide you with a profile? A
13 DNA profile?

14 A Well, at this point I was -- I was simply focusing on
15 the blood. Possibility of any blood. So, no, I did
16 not. I made the decision not to go any further with
17 that.

18 Q But on other items, you went beyond determination
19 of blood to determine if there was some sort of
20 other biological sample that might be able to
21 provide you with a DNA profile; correct?

22 A Correct. And in most of those cases it was items
23 that were thought to have been touched by someone,
24 um, and, again, in this -- in this particular item of
25 evidence, uh, we were focusing on the presence or

1 absence of blood.

2 Q Did you, yourself, do the swabs of the RAV 4?

3 A Yes.

4 Q And that would be interior and exterior?

5 A Yes. All the swabs except -- Did you mean -- Do you

6 mean did I collect them?

7 Q Yes.

8 A Yes. I collected all the swabs that I examined from

9 the RAV 4, except for the hood latch, um, which was

10 collected -- swabbed by someone else, and there were

11 also some swabs from a battery cable and some

12 interior door handles that were collected by someone

13 else.

14 Q But regardless of who collected it, you did the

15 testing on it?

16 A Oh, yes. Yes, I did.

17 Q Okay. Now, when you actually collected -- Let me

18 start there first. Did you collect, um, a swab

19 from obvious places that a person might use to

20 open up the vehicle? Like, for instance, a door

21 handle?

22 A Again, I -- I didn't swab those areas. So someone

23 else swabbed those areas. But I'm assuming that's

24 what they did, is take them from obvious areas where

25 someone would have touched.

1 Q Did each swab indicate where they came from on
2 the vehicle?

3 A Yes.

4 Q And do you recall whether there were swabs of the
5 cargo door handle?

6 A The back. The very back. There was a -- I did take
7 a swab of, um -- and I believe it was my Item A23,
8 because, um, I did -- analyst was processing that
9 area, and saw something, and I did swab that area,
10 and I did extract it.

11 Q Okay. You -- You did extract a sample?

12 A Yes.

13 Q And that was human or nonhuman blood?

14 A It was positive, uh, for blood, because the
15 presumptive test was positive, but it was
16 inconclusive because I didn't -- the profile was too
17 partial. I could not, uh, make any kind of
18 conclusion. So that was inconclusive.

19 Q So you were unable, then, to then go further and
20 determine if that had any sort of a DNA profile,
21 whether it be a partial profile or a full pro --
22 profile?

23 A I did get a partial profile, but it was inconclusive
24 because, uh, sometimes -- if a partial profile only
25 shows up one or two, uh, types, then we usually

1 report that as inconclusive, because that's not
2 really enough genetic information, um, to report
3 that. So, in this case, um, it was inconclusive.
4 Q So on direct, for example, you had been asked by
5 Attorney Gahn, about partial profiling --
6 A Yes.
7 Q -- or a partial profile. Excuse me.
8 A Yes.
9 Q And, uh, for instance, I believe it was one where
10 there were seven characteristics --
11 A Yes.
12 Q -- of 15; is that right?
13 A Yes.
14 Q And you were able to come up with a partial
15 profile, but here you're saying it was probably
16 more like three characteristics?
17 A Yes. Right.
18 Q So because it was so little, you weren't able to
19 come up with something that you can even give a
20 partial profile to?
21 A Correct.
22 Q Okay. Now -- And -- and -- and the items that
23 you were able to obtain a DNA profile within the
24 RAV 4, were you able to match any of that DNA
25 profile in comparison to Brendan Dassey's

1 profile?

2 A No. None of the samples that I, uh, were able to
3 develop a profile were consistent with his profile.

4 Q But they were consistent with Steven Avery?

5 A And Teresa Halbach.

6 Q And Teresa Halbach?

7 A Yes.

8 Q So you were able to match it with somebody?

9 A Correct.

10 Q Just not Brendan Dassey?

11 A That's correct.

12 Q I believe you also looked at a jacket and a pair
13 of jeans; correct?

14 A Yes, I did.

15 Q I believe that was your designation IJ and IK?

16 A That's correct.

17 Q Did it indicate who those jeans were from?

18 A Yes. I was told they were -- they belonged to
19 Brendan Dassey.

20 Q And were you able to determine whether there was
21 any blood on those jeans?

22 A Yes. They were both negative for blood.

23 Q And the jacket as well?

24 A Yes.

25 Q And, again, did you go any further than to

1 determine any blood and determine some sort of
2 other DNA that might be, uh, available from the
3 jeans or the jacket?

4 A No.

5 Q Just the blood?

6 A Correct.

7 Q Now, did -- Again, was that your decision? Or
8 did someone else tell you, we're just looking for
9 blood?

10 A Well, in --in -- It depends on the type of case. In
11 most cases, if we're looking for something like
12 blood, then we focus on blood. Um, a lot of times
13 there are lots of different types of stains on
14 clothing or bedding or whatever, um, and some of
15 those biological materials we have presumptive tests
16 for and some we don't. We don't test every stain
17 that we encounter. Um, and in this case, like I
18 said, I was focused on whether there was blood there
19 or not. And it was negative.

20 Q So no blood on Brendan's jeans?

21 A Correct.

22 Q Or on his jacket?

23 A Correct.

24 Q Speaking of bedding, did you have an opportunity
25 to review any bedding that was provided to you by

1 law enforcement or other members of the Crime
2 Lab?

3 A No.

4 Q Were you aware that bedding had been seized?

5 A I don't believe so.

6 Q So no one told you about the bedding?

7 A I don't recall, no.

8 Q And if there was any possible biological samples
9 from the bedding, we won't know about it; right?
10 Unless you get to look at it to determine if
11 there's an extractable sample?

12 A Correct.

13 Q Were you provided with any shell casings to
14 determine any sort of, uh -- whether there was
15 any sort of biological sample that you could
16 provide a -- or develop a profile?

17 A No, I did not look at the shell casings. That's --
18 No, I did not.

19 Q Now, you said you didn't look at the shell
20 casings? You were aware there were shell
21 casings?

22 A I believe there was some submitted, but they wouldn't
23 have come to me, so I don't really have any knowledge
24 of them.

25 Q So, again, if they don't give them to you, you

1 can't --

2 A Correct.

3 Q -- tell us if there's any sort of DNA that you

4 can extract from those shell casings; is that

5 correct?

6 A That's correct.

7 Q Did you have an opportunity to look at a large

8 car hood? I think it's referred to as a Rambler

9 hood?

10 A No.

11 Q Any cardboard boxes provided to you to determine

12 whether there might be some blood or extractable

13 DNA?

14 A No.

15 Q Were you aware of any?

16 A No. I don't recall.

17 Q Okay. I believe you may have already testified

18 as to Exhibit 211. Do you recall this item?

19 A Yes.

20 Q The key. Uh, you had an opportunity, as you

21 testified, to develop a DNA profile from, uh --

22 from two sub -- on -- on two subjects from the

23 key; correct?

24 A Um, I'm sorry. Could you repeat that?

25 Q Sure. That was kind of confusing. You had an

1 opportunity to review the key; correct?

2 A Yes.

3 Q And from that key you were able to, um, obtain

4 some trace biological sample?

5 A Yes.

6 Q And from that you were able to develop a DNA

7 profile?

8 A Correct.

9 Q And I believe your testimony was that it

10 reflected that of Steven Avery?

11 A Yes.

12 Q Was there also a mix, including that of Teresa

13 Halbach, on the key?

14 A No.

15 Q Just Steven Avery?

16 A Correct.

17 Q Was Brendan Dassey's DNA on that key?

18 A No.

19 Q Was there any blood on the key?

20 A Uh, there was no visually, uh -- anything that looked

21 like blood. Uh, the swabbings that I took from the

22 key were also -- there was nothing consistent with

23 the appearance of blood. I did not do any

24 preliminary testing for blood on that.

25 Q Okay. And if I may just ask, why not?

1 A Well, because in a sample like this, when something
2 is that small, I really, um -- the important part in
3 most cases is whose DNA is there. And so I made the
4 decision that I was probably working with a limited
5 amount of sample, and I wasn't going to, uh, waste
6 any of that on a preliminary result that really
7 didn't give us very much information.

8 Q I'm going to show you what's been marked as
9 Exhibit 92. And do you recognize this exhibit?

10 A Yes.

11 Q And that, I believe, has your identification
12 number CJ2?

13 A Correct.

14 Q And that's a pair of leg irons you were asked to
15 test to see if you could find any extractable
16 DNA?

17 A Correct.

18 Q And were you able to do so?

19 A Yes.

20 Q And whose DNA were you able to extract from that?

21 A Uh, when I sampled this, I swabbed the inside
22 surface, um, of the round part, and it was a mixture
23 of DNA from more than one individual.

24 Q Were you able to make any match with any of
25 the -- the known samples you had before you?

1 A Um, Steven Avery, based on his, uh, standard sample,
2 he could be included in, uh, that mixture of DNA.
3 Q And Teresa Halbach was excluded?
4 A Correct.
5 Q As well as Brendan Dassey?
6 A Yes.
7 Q So he was, specifically, excluded from that?
8 A Correct.
9 Q And, again, I'm going to show you what's been
10 marked as Exhibit 9 -- 91. Thank you.
11 A Um-hm.
12 Q And I believe that has -- Well, first of all, do
13 you recognize that item?
14 A Yes, I do.
15 Q And that has identification number CJ1 on it?
16 A Yes.
17 Q And that's your identification number from the
18 Crime Lab?
19 A Yes.
20 Q And you had an opportunity, again, to
21 determine -- or to swab that and determine if
22 there was any sort of extractable DNA?
23 A That's correct. I swabbed the inside surface just
24 like I did with the other cuffs, um, and I got a
25 mixture of DNA from more than one individual.

1 Q Did you have the same conclusions with CJ1 that
2 you had with CJ2?
3 A Yes.
4 Q And that would be, you could include Steven Avery
5 as possible match to the DNA?
6 A Yes.
7 Q And exclude Brendan Dassey?
8 A Correct.
9 Q And Teresa Halbach was also not -- or -- not
10 included in that?
11 A She was also excluded.
12 Q Excluded?
13 A Correct.
14 Q Did you review any other -- Excuse me. Did you
15 review any other leg irons such as these?
16 A No.
17 Q Any other handcuffs?
18 A No.
19 Q Just those two sets?
20 A Correct.
21 Q So if there were any biological samples on these,
22 we wouldn't know, because you didn't have a
23 chance to look at them and test them; correct?
24 A Correct.
25 Q Were you able to -- or -- I'm sorry. Were you

1 asked to obtain any DNA profile from any hair
2 samples?

3 A No.

4 Q Would it have been your duties at the Crime Lab,
5 if, for say, a vacuum were seized, to go through
6 it and try to determine if there were any usable
7 hair samples?

8 A Uh, yes. In -- in a hair sample, really, the only
9 thing that you're looking at is going to be the root
10 portion of a hair. So I would, uh -- To see if hairs
11 were suitable for DNA, they would have to contain a
12 root portion.

13 Q Would someone else first go through it to
14 determine if that's possible before they send it
15 to you?

16 A No, I would do that.

17 Q Okay. And you don't recall, at anytime in this
18 investigation, they asked you to go through
19 any -- excuse me -- hair samples that might come
20 from, say, for instance, a vacuum?

21 A No.

22 Q You had testified previously that you had
23 reviewed a -- a -- a bullet fragment? I believe
24 it was your identification FL?

25 A Correct.

1 Q There was also a second bullet -- bullet
2 fragment; correct?

3 A Yes.

4 Q And you also had an opportunity to review that?

5 A Yes.

6 Q And that was, I believe, your designation FK?

7 A Yes.

8 Q Were you able to make any determination of
9 whether -- Well, first of all, were you able to
10 determine if there was blood on FK?

11 A Um, again, I treated that exactly like I did FL.
12 There was no visual, uh, indication of blood, so I
13 did not, um, do any preliminary test on anything.
14 Um, I simply washed that fragment -- bullet fragment,
15 as well, and treated it just like FL.

16 Q And were you able to extract some -- any sort of
17 a DNA sample for purposes com -- of a comparison?

18 A No, I was not able to develop a profile.

19 Q Now, you weren't the actual technician, or the
20 crime, uh, scene person, who was at the Steven
21 Avery trailer swabbing potential stains, etc.;
22 correct?

23 A That's correct. Excuse me.

24 Q Did you observe photographs while -- of items
25 that had been -- photographs of the trailer or

1 items that they suspected might be, um, blood or
2 some other sort of biological sample?

3 A No, I don't believe so.

4 Q So when you would get a swab, for instance, it
5 would just say where it came from?

6 A Yes.

7 Q And you recall that there had been some swabs of
8 stains of suspected blood from Steven Avery's --
9 Avery's bathroom floor, vanity, and sink?

10 A Yes.

11 Q And you had an opportunity to test all those
12 stains; correct?

13 A Yes.

14 Q And you were able to -- Well -- well, first of
15 all, it was -- Was it positive for blood?

16 A Um, I tested, um, several different swabs from those
17 areas. I tested, um, three from the vanity, one from
18 a toilet seat, and one from a sink. Um, one of those
19 swabs from the vanity was positive for blood, and one
20 from the sink was positive for blood.

21 Q And you were able, then, to -- to develop a DNA
22 profile of that blood sample? Or that --

23 A Yes. Yes.

24 Q Which one?

25 A Both of those samples, um -- Oh, I'm sorry. One of

1 those samples from the sink was consistent with
2 Steven Avery. The other, I did not develop a
3 profile.

4 Q Okay. None were consistent with Teresa Halbach?

5 A Correct.

6 Q And none were consistent with Brendan Dassey?

7 A That's correct.

8 Q Do you recall, again, having the opportunity to
9 test a swab of what appeared to be, or may have
10 been labeled as, a suspected blood found --
11 suspected blood found by the molding of the
12 bathroom or bedroom door?

13 A Yes.

14 Q And, again, you followed the same procedure you
15 just explained?

16 A Yes.

17 Q Were you able to test it positive for blood?

18 A That's correct.

19 Q And, again, were you able to develop a profile as
20 to the DNA of that blood?

21 A Yes.

22 Q And that DNA was?

23 A Consistent with Steven Avery.

24 Q And, again, excluding Teresa Halbach?

25 A Yes.

1 Q And excluding Brendan Dassey?

2 A Yes.

3 Q Some items were sent to the Crime Lab? Number of

4 knives. Were you able to, um -- Did you see

5 those knives?

6 A Yes. Excuse me. Yes.

7 Q And -- and, again, did you go through the same

8 process to make a visual ob -- observation to

9 determine if there was any blood on the knives?

10 A Yes.

11 Q Um, did you also do the same testing you

12 explained earlier about determining if there was

13 positive for -- for blood by using a -- a -- a '

14 swab?

15 A On some of the knives, yes. I did -- uh, if there

16 was nothing visual to look at, no visual-type stain,

17 then I just did random swabbings, um, on the blade

18 portion to test for blood.

19 Q Did you, also, then, test, thereafter, to

20 determine if there was anything that you could

21 extract from it that would develop into a DNA

22 profile?

23 A No.

24 Q And why wouldn't -- Why didn't you decide to go

25 that far?

1 A Well, because, again, um, in a lot of the -- a lot of
2 cases, especially with a case of this magnitude, we
3 have to make decisions along the way. Um, what
4 samples to take forward and what -- and when to, um,
5 stop. And in this case, I was focused on if it was
6 blood. It was not, so I chose to stop there.

7 Q At anytime do you recall independently, or if you
8 need to review your notes, any item that was
9 positive for some sort of a extractable fluid,
10 such as blood, sweat, saliva, that in -- under
11 comparison, matched with Brendan Dassey?

12 A No.

13 Q The answer is, there weren't any?

14 A No. There were -- Of all of the samples that I
15 extracted evidence samples and developed a profile
16 were -- from, none were consistent with Brendan
17 Dassey.

18 Q Thank you.

19 ATTORNEY FREMGEN: Nothing else.

20 THE COURT: Any redirect?

21 ATTORNEY GAHN: Yes, Your Honor. Few --

22 THE COURT: Go ahead.

23 ATTORNEY GAHN: -- questions.

24 **REDIRECT EXAMINATION**

25 BY ATTORNEY GAHN:

1 Q Ms. Culhane, do you know how many total items of
2 evidence, approximately, the Madison Crime Lab
3 received in this case from law enforcement?
4 A I believe there was a -- about 350 submissions.
5 Q And that was just in this one case?
6 A Correct.
7 Q Is that the largest number of submissions that
8 Crime Lab has ever received?
9 A I believe so. Yes.
10 Q And how many of those submissions -- Do you know
11 how many of them came to your unit? The DNA
12 unit?
13 A About 180.
14 Q So law enforcement submitted about 180 samples
15 for potential DNA testing?
16 A Yes.
17 Q Did you examine in some form or another all of
18 those submissions?
19 A Yes.
20 Q Would you explain to the jury, what is the range
21 of tests or examinations you do for an item of
22 evidence?
23 A Well, again, a lot depends on the type of case it is
24 and the request that -- that may be made.
25 Um, in a lot of these particular items

1 of evidence, I was looking for a transfer of
2 blood. Okay? Blood was found in the RAV 4. Um,
3 this was a homicide case. So, obviously, blood
4 would be a potential -- a very important
5 potential biological material. So I was focusing
6 on the presence or absence of blood in most of
7 these, um, pieces of evidence.

8 However, in some cases, it was more --
9 the information or the question we were trying to
10 answer was more, who touched this item or who may
11 have touched this item? Um, and in those
12 instances, blood wasn't necessarily the -- the
13 primary focus. The primary focus was, was there
14 DNA on that -- that evidence and who may it have
15 belonged to.

16 So those kind of decisions are made
17 routinely by all analysts as you go through the
18 evidence, based on what the piece of evidence is,
19 what type of case it is, and what information you
20 may have at the time.

21 And, of course, during the course of
22 the -- the investigation, a request can be made
23 from anyone to go back and look at other items of
24 evidence or, um, examine for different biological
25 fluids, or whatever. At some point a request can

1 always be made, uh, to go back.

2 Q Of those 180 samples that were submitted to the
3 DNA analysis unit, do you know about how many
4 tested positive for blood?

5 A Forty-one.

6 Q And did I ask you, this 180 that were submitted
7 to you, is that the largest amount of submissions
8 for one case that your unit has ever received?

9 A It's the most I've ever received. I'm -- I'm not
10 sure about the unit.

11 Q But you said that 41 tested positive for blood?

12 A Correct.

13 Q And then did you carry each of those on for DNA
14 testing further?

15 A I attempted, uh, some type of further testing on
16 them. In some cases, the -- even though the test may
17 indicate there's -- You know, if -- if the
18 preliminary test may be positive for blood, when we
19 finally extract it, part of our procedure in the
20 extraction is to quantitate or to find out how much
21 DNA you actually have in your samples.

22 And in some of these samples, the level
23 of DNA, or the amount of DNA there, was below the
24 limits of detection for our system. In other
25 words, there wasn't enough there to go any

1 further with.

2 Q And even if there -- Let's say there -- your
3 system can say, well, there is enough to go
4 forward, and you do go forward with other steps
5 of the tests, are there other limitations that
6 you still may not develop a profile?

7 A In some cases, it may depend on the sample. If
8 there's, uh, degradation, if there is, um, uh -- You
9 may have -- Your quantitation part of the -- part of
10 the procedure may tell you you have enough DNA, but
11 when you actually amplify or you try to make copies
12 of those, uh, target portions of DNA, um, you may --
13 just may not develop a profile. And in that case,
14 um, because of the condition of the sample, or
15 whatever, there's just no profile there to be
16 developed.

17 Q So as opposed to what we may see on *CSI*, and *Law*
18 *and Order*, and other shows, there are detection
19 limits built into the system, itself. Is that
20 fair to say?

21 A Yes, there are.

22 Q And I want to talk a little bit about the
23 different samples that have come up now. You
24 found complete DNA profiles from blood swabbings
25 in the car; correct?

1 A Yes.

2 Q You found Steven Avery's from blood?

3 A Correct.

4 Q You found Teresa Halbach's from considerable

5 blood stains in the rear cargo area; correct?

6 A Yes.

7 Q And you could carry the system through to get a

8 complete, full DNA profile?

9 A Yes.

10 Q Now, we talked a little bit, or I think defense

11 counsel has asked about, um, what's referred to

12 as touch DNA?

13 A Yes.

14 Q Understand what I'm talking about? Or what we're

15 talking about when you --

16 A Yes.

17 Q -- say touch DNA?

18 A Yes.

19 Q Could you talk about the limitations or the

20 sensitivity of the system, and the differences

21 between having a blood standard and what you

22 think may be touch DNA? Could you explain that

23 to them?

24 A Most of the time when you have a blood sample, you

25 have a -- a -- a large, large amount of DNA to work

1 with. Our systems are very sensitive, um, and we
2 get -- we can get very good results on most samples.
3 However, uh, there is a limitation to the system.

4 When you're talking about a blood
5 sample, you're talking about a lot of cells, in
6 most cases, are present in that -- in that
7 sample. If you have enough blood to see a
8 reddish/brown stain, you've got a lot of cells.

9 When you're talking about a touched
10 item, you're not necessarily, um, targeting a
11 specific stain. If I were to touch this, um, all
12 I can do is swab the area that I touched, and
13 what I'm looking for is a transfer of epithelial
14 or skin cells that may have been transferred from
15 my hand to the item.

16 Um, so it's not quite the same thing as
17 actually looking at a -- at a blood or a semen
18 stain where there's plenty -- in most cases,
19 plenty of DNA, um, to sample. When you're
20 looking at a touched item, you're looking at very
21 small amounts of DNA.

22 And, also, if you're looking at a
23 touched item that, um, is an item that could have
24 been touched by more than one individual, in some
25 cases you're going to get mixtures of DNA. Some

1 cases you won't. Some cases you're going to get
2 DNA from the last person who touched it.

3 A lot of that depends on the person,
4 themselves. Most of us, when we touch items of
5 evidence, we leave, um, some of our DNA behind.
6 but some people leave more than others. Some
7 people naturally shed more cells than others. So
8 if you're a person who sheds a lot of cells, when
9 you touch something, you are probably going to
10 leave behind more DNA than someone who does not
11 naturally shed that many cells.

12 So when we're looking at touched items,
13 all of these variables and all these factors come
14 into play, and all of this determines whether
15 you're going to get a usable profile from a
16 sample or not.

17 Q And when you talk about someone being a good
18 shedder or a poor shedder, does the surface
19 that's touched have any impact on whether you'll
20 find a -- sufficient DNA to develop a profile?

21 A Yes. If you're touching something rough, uh, like a
22 piece of wood, maybe, or, um, I don't know, a rough
23 surface, you're probably going to leave more cells
24 than if you're touching a smooth surface, probably.
25 And, again, these are generalizations. These are not

1 rules, and these are not always exactly the same.

2 Um, smooth surfaces, sometimes there's

3 not as much, uh, DNA left behind, but, again,

4 that's not to say that you can't get a profile

5 from a smooth surface. They're just

6 generalizations.

7 Q An example would be -- And I believe Mr. Fremgen

8 handed you the .22 caliber rifle; correct?

9 A Yes.

10 Q And you swabbed the barrel? Well, you looked for

11 blood and did not find any; correct?

12 A Yes.

13 Q And then you swabbed the trigger guard?

14 A Yes.

15 Q But, according to your notes, as I recall them,

16 you developed some DNA; correct? Some DNA

17 markers?

18 A I -- Yes. I developed one marker.

19 Q And I think you referred to it as res -- uh,

20 finding some trace DNA being present?

21 A Correct.

22 Q So, if there, is it a limitation of the system to

23 develop the full profile? Or could it be that

24 whoever touched it just did not leave enough or

25 the surface wasn't sufficient to gather enough?

1 A It's probably a combination of all three. I --
2 There's no way to tell exactly why. Um, the bottom
3 line is the person who touched it may not have shed
4 enough DNA, um, the DNA, itself, may be degraded, not
5 of -- of good enough quality to get a full profile.
6 So it's probably a combination of all those factors.

7 Q And that would be the same for license plates?
8 The same factors would, uh, determine whether DNA
9 was left on license plates if they were touched
10 by someone?

11 A Yes, that's correct.

12 Q And that, of course, is also going to be assuming
13 someone's not wearing gloves, or using something
14 to put in between the item and their hands, or
15 whatever?

16 A Right. I'm -- I'm making the assumption that you're
17 actually touching it with your skin. Your bare skin.

18 Q And, um, Mr. Fremgen asked about the key. And
19 you found Steven Avery's profile on that key;
20 correct?

21 A Yes.

22 Q Have there been any studies done, or any
23 literature that talks about this, um, somewhat --
24 I think you stated that you generally will find
25 the profile of the last person who touched it; is

1 that correct? Did you state that?

2 A Yes.

3 Q Could you explain that to the jurors more?

4 A Well, again, there have been studies done about, uh,
5 transfer and -- and how much -- how much you have to
6 handle something, um, what -- what factors are
7 involved in transferring DNA by touched items. And,
8 again, these are not -- these are generalizations.

9 And in a lot of cases it has been found
10 that transfer of DNA happens instantaneously, um,
11 and it's usually either the last person that
12 touched the item or you're going to get a mixture
13 of DNA. And, again, this is simply a
14 generalization. Um, you may get mixtures of DNA
15 from several different people who have touched
16 it, or you may just get a single source DNA.

17 Q And I believe, also, Mr. Fremgen asked you
18 whether there was any blood on the pants of
19 Brendan Dassey that were submitted. Do you
20 remember that?

21 A Yes.

22 Q And I believe your -- And what -- what was your
23 answer to that question?

24 A There was no blood found.

25 Q Um, do you recall what you put in your notes when

1 you examined the pants of Brendan Dassey?

2 A Uh, yes, I can refer to those notes. Um, in my notes

3 I describe the size, um, what brand they were. Um,

4 my notes read that they're fairly clean. Large areas

5 of whitish stain. Looks like staining from bleach.

6 No stains consistent with the appearance of blood.

7 There was one small brown stain on the leg of the

8 jeans, and that was negative for blood.

9 Q I've put up what has been previously marked as

10 Exhibit 54, and are these the jeans of, uh,

11 Brendan Dassey, do you recall, that you examined?

12 A I believe so.

13 Q And you note in your notes that there appear to

14 be bleach stains; correct?

15 A Yes.

16 Q And what, um -- What does bleach do to DNA?

17 A Um, bleach, basically, chews up DNA and destroys it.

18 We use bleach in the laboratory, a five percent

19 solution of bleach, to clean our bench tops, to clean

20 all of our scissors and forceps, um, to make sure

21 that we don't have any DNA that's -- that's left on

22 our -- our bench tops, uh, or pipets, or any of the

23 instrumentation that we use.

24 Q And, I'm sorry, you use bleach to clean your

25 instruments, you stated?

1 A Yes.

2 Q And the reason being because it, basically, kills
3 the DNA?

4 A Yes.

5 Q And, um, if these -- If pants have been washed a
6 number of times or, uh -- what is that going to
7 do to potential DNA if you've had a number of
8 washings of pants?

9 A Well, in most cases, DNA is -- is -- if it's going --
10 if it's in a -- a material like blood, or semen, or a
11 biological fluid, it's going to be soluble in water.
12 So the more times you wash it, uh, depending on how
13 thorough you wash it, what type of -- you know,
14 whether you wash it with bleach, whether you wash
15 it -- what type of detergent you use, um, eventually
16 it's going to destroy the DNA, or at least wash it
17 from the garment where we would not be able to detect
18 it.

19 Q And so cleaning materials, like bleach, or wiping
20 surfaces clean, that all, also, would have an
21 impact on whether you will find DNA on a
22 particular item to test?

23 A Yes.

24 Q And is there anything in the literature that, uh,
25 discusses what the absence of DNA at a crime

1 scene means?

2 A Um, most of the references that you see in the
3 literature, the absence of DNA's, basically,
4 inconclusive. The presence of DNA, obviously, uh,
5 point to some sort of physical contact.

6 Uh, the absence of DNA, because there's
7 so many variables, it either -- there was no
8 contact, it wasn't there in the first place, or
9 it's been destroyed by some environmental factor,
10 or it's just in a level that's too low to detect.
11 So, basically, the absence is an inconclusive,
12 uh, conclusion.

13 Q And all the other variables kick in, too, whether
14 someone's a good shedder or bad shedder; correct?

15 A Yes. Correct.

16 Q The surface area that perhaps the biological
17 substance is left upon; correct?

18 A Yes.

19 Q Whether someone's cleaned it up or not?

20 A Correct.

21 Q So the absence of DNA at a crime scene does not
22 mean someone was not there?

23 A Well, the absence just means that there's no DNA that
24 we can detect.

25 Q Thank you. That's all I have.

1 THE COURT: Any recross?

2 ATTORNEY FREMGEN: A few, Judge.

3 RECROSS-EXAMINATION

4 BY ATTORNEY FREMGEN:

5 Q Uh, one of the comments, I think, Mr. Gahn was
6 asking was about blood and comment about touching
7 items versus, um, a blood stain, for instance.
8 It's easier to see blood; correct?

9 A Yes.

10 Q Would you agree it's easier to develop DNA
11 profile from blood than from possibly a touched
12 transfer of DNA?

13 A Well, it depends on how much blood is there. But if
14 you have a -- a visible blood stain, a fairly visible
15 blood stain, with a lot of material to work with, um,
16 you'll probably be able easily to develop a DNA
17 profile. It's -- it's hard to compare the two,
18 because there's no visual, um, measure between the
19 two. There may be a touched item that you have with
20 lots and lots of DNA on it. There may not. But you
21 can't really see that. There also may be touched
22 items with very little DNA that you can't really see.

23 Q One you can see you think you could more easily
24 extract DNA from something that you can't see?

25 A Um, I suppose I would agree with that.

1 Q Well, one of the comments you made on redirect
2 was there are more cells available in a blood --

3 A Well, if you have a fairly large blood stain, again,
4 you're talking about a -- a -- I was referring to the
5 stains, primarily, that I recovered from the RAV 4.
6 If you have a very light blood stain, and you don't
7 have very much -- I mean, it's a very weak blood
8 stain -- stain, you may not have that many cells in
9 that as well.

10 Q But the fact that -- you just, I think, mentioned
11 it -- the fact that it may be -- it may not be
12 blood, doesn't mean you can't extract the DNA
13 sample from that item? It just depends on
14 whether or not the -- the -- you know, whether or
15 not there was a transfer of some sort of
16 biological fluid or cell from a touch, for
17 instance, that you can actually be able to, uh,
18 extract and develop into a profile?

19 A Correct.

20 Q Okay. So, for instance, you had mentioned the
21 bullet fragment FL. You weren't able to discern,
22 um, blood on the bullet?

23 A Not visually, no.

24 Q Visually.

25 A Right.

1 Q And -- But you were able -- you said you -- I
2 think you said you washed the bullet?

3 A Yes.

4 Q And able to extract DNA from that, that matched
5 Teresa Halbach?

6 A Correct.

7 Q You tried the same with the bullet FK, and unable
8 to do so?

9 A Correct.

10 Q And that would be the same with such things as
11 shell casings, for instance? You could probably
12 wash those to extract, potentially, a DNA sample
13 or something that might be able to develop into a
14 profile?

15 A Correct.

16 Q But -- But, again, you didn't do that in this
17 case?

18 A That's correct.

19 Q So I guess the issue is, if you don't try, you
20 won't know; right? If you don't try to extract
21 DNA from something, you don't know if it's there?

22 A That's correct.

23 Q In regards to the -- the jeans, question was
24 raised about there -- you -- you noticed some
25 white specks and a light, um, kind of a brushed

1 area that appeared to be bleach?

2 A Yes.

3 Q Now, if the entire pair of jeans had been soaked
4 in bleach, you probably expect a little more
5 white, uh, I guess, bleaching stain, than what
6 you saw; correct?

7 A I don't really recall. All I recall is that the
8 stains looked like they were consistent with stains
9 that would have been left from bleach. I don't
10 really recall how much bleaching there was.

11 Q And when you were looking for blood, you were
12 looking, again, visually, first?

13 A Yes.

14 Q And did you then swab the entire, even cuffs, to
15 decide -- to determine whether or not there might
16 be more -- I won't -- I don't want to call it
17 invisible, but blood that you just can't detect
18 with the naked eye?

19 A No. I -- There was one small brownish stain on the
20 bottom leg of the jeans that was negative.

21 Q So other than that detectable colored stain --

22 A Yes.

23 Q -- you didn't swab for any other areas?

24 A No.

25 Q Now, you mentioned that there were about 350

1 submissions to the Crime Lab in this --

2 A Yes.

3 Q -- case? And about 180-plus just to your lab?

4 A Just to the DNA section.

5 Q Just to the DNA section?

6 A Yes.

7 Q Now, you mentioned this is a homicide case, so,

8 obviously, I take it, that it had a more priority

9 than some other cases you were handling?

10 A Yes.

11 Q And some of the comments you made in questions to

12 myself, and I think redirect to Attorney Gahn,

13 were you had to make decisions what you were

14 going to test further to see if there was a D --

15 potential extractable DNA sample; correct?

16 A Yes.

17 Q Now, you didn't just decide, we're just too busy.

18 Just plain busy. We can't do it. That wasn't

19 your reason; right?

20 A No.

21 Q Correct? And you didn't do it because it's too

22 hard?

23 A No.

24 Q Why didn't you do it?

25 A Well, again, because we're -- what we're doing was,

1 as an analyst, it's my job to take all the
2 information I have on a case and to decide what
3 evidence is going to be -- I feel is going to be
4 probative. Again, at some point during the -- my
5 analysis, and after my reports are written, um, if
6 there was more evidence that was felt to be probative
7 by either the submitter or defense counsel, then
8 those requests could be made at that time to further
9 do more testing.

10 Q You said that this is a homicide case? You're
11 also aware there were allegations of sexual
12 assault?

13 A Yes.

14 Q And would you agree with me that in those types
15 of investigations testing the bedding is often a
16 very common investigate -- or a common way of
17 determining if there's any extractable DNA?

18 A Yes, it can be.

19 Q Okay. And, again, you weren't asked to look at
20 any bedding?

21 A That's correct.

22 Q No one sent it to you?

23 A No, it was not submitted.

24 Q And you didn't test anything like that?

25 A That's correct.

1 Q Thank you.

2 THE COURT: All right. You may step down.
3 Unless the State has a five-minute witness here,
4 we're going to adjourn and -- and reconvene at 1:00.

5 ATTORNEY FALLON: Can you make that
6 about 1:10?

7 THE COURT: One-ten.

8 ATTORNEY FALLON: Thank you.

9 (Recess had at 11:54 a.m.)

10 (Reconvened at 1:15 p.m.)

11 THE COURT: Good afternoon. Counsel, your
12 first witness?

13 ATTORNEY GAHN: Yes, Your Honor. The
14 State would call Nick Stahlke to the stand.

15 THE CLERK: Please raise your right hand.

16 **NICK STAHLKE,**
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: Nick Stahlke, S-t-a-h-l-k-e.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY GAHN:

24 Q Mr. Stahlke, where are you employed?

25 A Wisconsin State Crime Laboratory in Madison.

1 Q And what is your position there?

2 A I'm a forensic science training coordinator.

3 Q And what is your formal, um, educational

4 background?

5 A I have a Bachelor's Degree in chemistry and medical

6 technology.

7 Q And would you please, uh, summarize your current

8 duties and responsibilities at the State Crime

9 Lab?

10 A As a forensic science training coordinator, I'm

11 responsible for coordinating the teams of individuals

12 that go out and process crime scenes, and I'm also

13 responsible for the training of those teams to

14 respond to those cases.

15 Q And, um, how long have you been at the Wisconsin

16 State Crime Laboratory?

17 A Fifteen years.

18 Q And during those 15 years, did -- was there any

19 time period that you were involved in the

20 interpretation of blood stain patterns?

21 A Actually, the entire time that I've been at the State

22 Crime Lab in -- in Madison I've been involved in

23 blood stain pattern interpretation.

24 Q Have you attended any specialized schools for

25 blood stain pattern interpretation?

1 A Yes, I have.

2 Q And would you just describe some of, uh, the
3 schooling you've had for the --

4 A In -- in 1988, I attended a 40-hour course in basic
5 blood stain pattern interpretation. In '99, I also
6 attended a advanced, uh, course in crime scene
7 processing, which had a component of blood stain
8 patterning interpretation. And I've also been to or
9 attended workshops involving the examination of
10 clothing with stains.

11 Q And could you, uh -- What skills and experience,
12 uh, do you have in blood pattern analysis?

13 A Well, I've been, uh, examining scenes and clothing
14 for the past 19 years. I had, uh, five-and-a-half
15 years at the State Crime Lab in Idaho prior to my,
16 uh, being employed with the state of Wisconsin. So
17 for the past 19 years I've examined, uh, scenes and
18 see whether or not there's any, uh, information that
19 we can -- that we can, uh, gain from interpreting
20 those stains at crime scenes.

21 And then any, uh -- any clothing that
22 has been submitted to the Crime Lab that has
23 blood stains on them to determine whether or not
24 there's any additional information that can be
25 gained from an interpretation of those stains.

1 Q And have you given lectures or taught on this
2 subject that's related to blood stain pattern
3 analysis?
4 A Yes, I have.
5 Q And, um, you stated you've been involved for 19
6 years with blood stain pattern analysis?
7 A That's correct.
8 Q Have you ever testified in a court of law in, um,
9 Wisconsin as an expert in interpreting blood
10 stain patterns?
11 A Yes, I have.
12 Q And how many times?
13 A Approximately ten times in interpretation of stains.
14 Q And have you ever been rejected as an expert in
15 this area?
16 A No, I have not.
17 Q Um, I'd like you just to take a moment and --
18 Well, first, I'm going to ask Mr. Kratz to hand
19 you what's been marked as Exhibit 165, and if you
20 would please identify that for us? And what --
21 what is that document, sir?
22 A This is my curriculum vitae.
23 Q And is that, basically, a summary of your
24 training, education, and experience in blood
25 pattern analysis?

1 A Yes, it is.

2 Q Thank you. Now, I would ask you to, um, just
3 explain for the jurors the types of
4 determinations that can be made from blood stain
5 patterns?

6 A Interpretation of stains -- blood stain -- blood
7 stains, can help in determining the victim's
8 placement, the suspect's placement, whether or not
9 the victim has moved since bloodshed has occurred or
10 it began, or it can also give some indication of
11 whether or not the suspect has -- that -- that
12 there's been any movement from the suspect.

13 It is a, uh -- It also can give us in
14 some indication of, uh, the types of weapons that
15 may have been used, or the instruments that
16 use -- were used in the -- in the assault, uh,
17 and it's uh -- it can give me -- give us some
18 indication of the manner in which those, um,
19 blows or -- or the types of what -- how the blood
20 actually had -- has been deposited.

21 Uh, one -- one of the valuable things
22 between -- of blood stain pattern interpretation
23 is trying to determine the difference between --
24 or disting -- to distinguish the difference
25 between a suicide and a homicide. Um --

1 Q Are there different types of blood stain
2 patterns?

3 A Yes, there is.

4 Q And what -- And what are they, briefly, for the
5 jury?

6 A Basically, there's three categories of stains. You
7 have passive stains, uh, projected stains, and
8 contact stains.

9 Q I'm going to, um, put up on the screen an exhibit
10 that has already been introduced into evidence.
11 It's Exhibit 141. And this is a photograph, um,
12 which you'll see in just a moment, of, uh, Teresa
13 Halbach's, um, 1999 RAV 4. Do you recognize this
14 vehicle?

15 A Yes, I do.

16 Q And when did you first see this vehicle,
17 Mr. Stahlke?

18 A It would have been on a Monday, November 7 in 2005.

19 Q And where was the vehicle at that time?

20 A This is in the center bay of our garage at the State
21 Crime Laboratory in Madison.

22 Q And did you have an occasion to examine the
23 interior of this vehicle for any type of blood
24 stains?

25 A Yes, I did.

1 Q And exactly what -- what did your examination
2 consist of, initially?

3 A Basically, the examination of a -- of a case for
4 blood stains is to a visual examination, and in this
5 particular case I observed blood stains in the front
6 passenger compartment of this RAV 4.

7 Q And what type of blood stains did you observe in
8 this RAV 4 in the passenger compartment?

9 A In the front passenger compartment, uh, I saw a
10 contact transfer stains. And I said that as a -- one
11 of the categories of contact transfer stains is those
12 stains that, um, have a bloody object that has come
13 in contact with the nonbloody surface.

14 Q I'm going to, um, now show you what has already
15 been marked as Exhibit 142, and I -- also
16 identified by, uh, Sherry Culhane as a photograph
17 of Teresa Halbach's vehicle from the Crime Lab.
18 And do you recognize this photograph?

19 A Yes, I do.

20 Q Mr. Stahlke, is the laser pointer up there?

21 A I do not see one.

22 Q Okay. We're going to look for that, uh, now.
23 Um, but, uh, what does this, um, photograph
24 depict?

25 A Well, this is the driver's compartment. Front -- or

1 the seat with the door open.

2 Q And did you observe any type of, um, individual

3 contact transfer stains, uh, in this area?

4 A Yes, I did.

5 Q Okay. I'd like you to just to point out to the

6 jurors where you found these, uh, stains?

7 A Right here on this front driver's seat right here.

8 Q And how did you describe that? As what type of

9 stain?

10 A That would be a contact transfer stain.

11 Q And what do you mean by a contact transfer stain?

12 A Be the type of stain that's deposited when a bloody

13 source has come in contact with a nonstained surface.

14 Q And I'm going to just show you now what has been

15 previously marked as Exhibit 144. And this is a

16 photograph, also, of Teresa Halbach's RAV 4. Can

17 you describe or show any other contact pattern

18 stains that you observed in the vehicle for the

19 jury?

20 A This image is of the passenger's front compartment,

21 or passenger seat, with the front door open, and, uh,

22 I also saw contact transfer stains right on the front

23 edge, or on the left edge, of that, uh, front

24 bucket -- bench seat or bottom of the seat. There's

25 also stains on this, uh, plastic CD holder.

1 Q And, again, what type of stains did you find on
2 that? On those -- In those two locations?

3 A Again, these are all contact transfer stains.

4 Q Are these stains consistent with being left by a
5 person who would have a bloody hand, shall we
6 say?

7 A Yes.

8 Q I'm going to now show you what has been marked as
9 Exhibit 143 and ask you to describe if you
10 observed any contact blood stains in this
11 photograph?

12 A Yes, I did.

13 Q Point those out to the -- point it out to the
14 jury, please?

15 A Right here. Right below -- Here's the ignition to
16 the, uh, RAV 4 right here, and this is just down and
17 to the right of the ignition.

18 Q And, again, that is the type of stain that is
19 left by something that has blood on it, coming in
20 contact, and leaving the stain?

21 A That's correct.

22 Q I'm going to now show you what has been
23 previously marked as Exhibit 89, and identified
24 as a cut. Uh, photograph of a cut to the middle
25 right finger of Steven Avery. Do you see that?

1 Have you take a look at that, please? Seen that
2 before; correct?

3 A Yes, I have.

4 Q Is that cut that you observed to Steven Avery's
5 hands, is that the type of bloody object that
6 could leave the blood pattern that you observed
7 by the ignition switch of Teresa Halbach's car?

8 A This type of cut would be a candidate for the type
9 of -- of bloody source that could have, uh, left that
10 blood stain or that contact transfer stain.

11 Q I'm going to show you now and what has been
12 previously marked as Exhibit 145, and ask if you
13 can identify that photograph for us?

14 A Yes, I can.

15 Q And is there a blood stain in that photograph
16 that you observed?

17 A Yes. This is actually a photograph of the right rear
18 passenger side door, and there's a -- a stain right
19 here that is considered -- I consider a passive drop.

20 Q And when you say "a passive drop" -- here we have
21 zoomed in on it -- what do you mean by a passive
22 drop?

23 A This is the type of stain that, um, if you have a --
24 a bloody object, and there's enough blood on that
25 object, uh, that it will drip or fall to the ground,

1 uh, when gravity is the only thing that is
2 influencing, uh, that particular blood stain or blood
3 droplet that hits the -- the -- that impacts that
4 surface.

5 Q And, again, could a passive drop, such as this,
6 be left by someone who has a cut to their hand?

7 A Yes, it could.

8 Q Based upon the -- the combination of blood stain
9 patterns that you observed in the passenger
10 compartment and here at the rear, uh, passenger
11 compartment, uh, do you have an opinion to a
12 reasonable degree of scientific certainty whether
13 these combinations of blood stain patterns were
14 left by someone who was actively bleeding?

15 A Yes, I do.

16 Q And what is that opinion?

17 A That that is, in -- indeed, the -- uh, what probably
18 happened. A individual that is, uh -- has a -- a --
19 a wound of some sort, uh, and taken all these things
20 into combination or consideration, that, uh, they
21 were left by somebody that was actively bleeding.

22 Q Now, did you also examine the rear cargo area of
23 Teresa Halbach's car?

24 A Yes, I did.

25 Q Okay. And I'm going to show you what we have

1 previously marked as Exhibit 146 and ask if you
2 recognize that area?

3 A Yes. This is an image of the rear cargo area of
4 the -- the RAV 4 that I examined on the -- on
5 November 7.

6 Q And did you observe any blood stain patterns in
7 this area, of, uh, Teresa Halbach's car?

8 A Yes, I did.

9 Q And would you point those out for the jury?

10 A Right along this right -- the molding, plastic
11 molding, just behind the right rear passenger side
12 seat are a series of stains.

13 Q We're going to zoom in here a little bit for you,
14 um, Mr. Stahlke, and, again, describe for the
15 jurors what -- what actually you're observing
16 here?

17 A These -- All these stains, uh, fall in the category
18 of a contact transfer in which a bloody object has
19 come in contact or -- with a, uh, nonbloodied stain
20 surface. And in this particular case, we've got some
21 characteristics within that stain that are unique.

22 These stains right here have a, uh
23 elliptical pattern. In other words, they -- they
24 look like they're, um, half circles, and
25 they're -- they have the appearance of -- if you

1 would take spaghetti, and put spaghetti sauce on,
2 and, um, then flip it out on a table top or
3 something on that order, or on the edge of your
4 plate, you could see that there's strands of --
5 of -- and then take those -- spaghetti out of
6 that -- out of those -- off that surface, it
7 would leave a -- the surf -- the, um -- the
8 characteristics of these particular stains. And
9 they're characteristic of, and typical of, bloody
10 hair that has come in contact with that surface.

11 Q Is that, uh, in your field, sort of a -- a
12 classic pattern that you see left by bloody hair?

13 A When I see a -- a stain like this, this is definitely
14 a classic stain, and it indicates a strong likelihood
15 that that is head hair that has been -- that has been
16 bloodied, and then that has come in contact
17 transferring that -- that blood to that surface.

18 Q Did you observe any other type of blood stain
19 patterns in this area of Teresa Halbach's
20 vehicle?

21 A Well, there's additional contact stains or transfer
22 stains here. Uh, and those are, in general, in a --
23 in description because they're -- they're just a
24 bloody object that's come in contact.

25 There's also some light transfer stains

1 on the carpeting, which are consistent with a
2 swipe pattern. Now, a swipe pattern is a, uh --
3 an object that has blood on its surface, and
4 it's -- indicates movement, and it transfers,
5 then, that blood from the bloody object onto a
6 nonstained surface. But showing -- but it also
7 indicates movement, so we call that a swipe
8 pattern.

9 Q I'm going to show you what has been marked as
10 Exhibit 148. And I believe Ms. Culhane described
11 this as the rear panel area of the RAV 4; is that
12 correct?

13 A Well, this would be the threshold.

14 Q Threshold or rear area of the cargo --

15 A Correct. It's a -- it's -- it's just below this
16 picture would be where the -- the, uh, bumper of that
17 vehicle would be. So this is the threshold of the
18 rear door.

19 Q Did you observe any blood stain patterns in this
20 area?

21 A Yes. As you can see, there's some stains here, here,
22 um, some stains here as well, and along here. Some
23 of them are more difficult to see than others.

24 Q And how would you describe those stains that you
25 observed on the threshold of the door?

1 A Well, they've got, um -- These are -- Some of them
2 are contact transfer stains like I described earlier,
3 others are impact stains. And they're -- There's one
4 here that might be, uh -- might be considered a --
5 that's considered a swipe pattern there as well.

6 Q And, again, what does a swipe pattern indicate to
7 you?

8 A Movement.

9 Q It --

10 A It's the transfer of a -- of blood from a -- a moving
11 object that has blood, uh, on it, and, uh, it's a
12 trans -- it's -- has contact with a nonstain surface,
13 leaving that blood behind, and it also indicates that
14 there's been movement.

15 Q Based upon your observation of the combination of
16 bloody stain patterns you've observed here on the
17 threshold, and, also, those wavy patterns that
18 you observed up in the -- the inside panel of the
19 rear cargo area, are these consistent with a body
20 that has bloody hair being moved into the rear
21 cargo area?

22 A I would say it's very consistent with that, yes.

23 Q Did you also examine the, um, interior door of
24 the RAV 4?

25 A Yes, I did.

1 Q I'm going to show you now what -- what has been
2 marked as Exhibit 149, and ask you to point out
3 to the jurors any observations you made of this
4 examination?

5 A This is the rear cargo door. It's hinged on one side
6 and it opens like any other door entrance to a
7 vehicle, but it's larger, and it covers the whole
8 rear end of this RAV 4, and it opens to the right.

9 This is the interior of that particular
10 door. On this door were numerous impact stains.
11 Some of these stains, then, had associated flow
12 patterns to them.

13 Q I'm going to zoom in here on some of these stains
14 and ask you to just point out to the jury, um,
15 the stains, again, that you observed?

16 A Okay. Some of the stains right here. You see these?
17 They're -- These are more circular in nature. Here,
18 here, here. These here. This one.

19 Q And what does that mean to you when you say
20 they're circular in nature? Or they appear that
21 way on the door?

22 A It means that blood has been flung off of a bloody
23 object and then impacts that surface. And if they're
24 perfectly circful (phonetic) -- circular, that means,
25 then, that they impacted that circuit -- surface at a

1 90-degree angle.

2 Now, if there's any elliptical pattern
3 to that, then they impacted at an angle. In this
4 particular case, these are near circular.
5 However, some of them are more -- are somewhat
6 elliptical in that they may have fallen. So
7 it -- it's indicative of blood being flung or
8 thrown from a moving object.

9 Q Now, I think you also stated that you saw some
10 associated flow patterns?

11 A That's correct.

12 Q And, again, please point those to the jury and
13 explain what you mean by that?

14 A Right here, you can see that there's, um, some --
15 flow or some stains that -- that have, uh, not only
16 impacted the surface, but then, also, uh, flowed down
17 toward the ground. Well, these flow patterns, uh,
18 are then acted on by gravity alone after they've
19 impacted the surface of this interior of the door.

20 Q And seeing this type of pattern, what does that
21 indicate to you?

22 A Well, the flow patterns after an impact stain would
23 indicate that it's a fairly large amount of blood
24 that's -- that's impacted that surface, and it -- it
25 just didn't stick on that particular surface, it had

1 enough, then, that there was gravity acted on it, and
2 pulled it down toward the ground.

3 Uh, with all these stains, these stains
4 are indicative of -- of a -- a bloody object that
5 has been -- is flung around and then causing that
6 blood to, uh, release from that bloody object and
7 striking the surface of that interior side of the
8 door.

9 Q I'm going to show you what has been marked as
10 Exhibit 166, and ask you to identify this? What
11 is that, sir?

12 A This is the entire, uh -- an overall shot of the, uh,
13 rear cargo area of that RAV 4.

14 Q And did you do -- make any measurements in this
15 area?

16 A Yes, I did.

17 Q And what area did you measure?

18 A I measured the opening of the cargo area.

19 Q And, um, would a slender 5'6 woman fit in the
20 back of that RAV 4?

21 A Yes.

22 Q And based upon all the blood patterns that you
23 observed in the rear cargo area of that, um,
24 RAV 4, um, do you have an opinion to a reasonable
25 degree of scientific certainty whether the

1 patterns you observed by the interior panel on
2 the threshold, and on the interior door, itself,
3 are consistent with a body with a bloody head
4 being loaded into the rear cargo area?

5 A Yes, I do.

6 Q And what's that opinion?

7 A That that is, indeed, what may have happened. A
8 bloody -- a body that has bloody head hair was, uh,
9 loaded in, uh -- into this rear cargo -- cargo area
10 and placed, uh, just behind the right rear seat of
11 this, uh -- of the seating area in this car. This
12 Toyota RAV 4.

13 Q And, finally, Mr. Stahlke, I just have, uh, one
14 other issue to discuss with you. I'm going to
15 hand you what's been marked as Exhibit 167, and
16 ask you if you would, um, identify this
17 photograph for the jurors? And we'll also put it
18 up on the big screen. Uh, I want to ask you, did
19 the time come when you were asked to check the
20 odometer on this vehicle?

21 A Yes, there was.

22 Q And -- and, um, what happened when you attempted
23 to check the odometer?

24 A I believe it was the second day. It would have been
25 the 8th of November, then, that, uh, we got a call

1 requesting that we check the odometer reading on this
2 vehicle. Uh, when, uh, we attempted to, uh -- It's a
3 digital dashboard. So when we went to open or turn
4 the key, there was -- there was no electronics, uh,
5 to this particular dashboard. So we couldn't get the
6 reading.

7 Q So what did you do?

8 A We, uh, opened up the -- the hood of the, uh -- to
9 the engine compartment, and, uh, to checks -- I was
10 thinking that the battery was probably dead.

11 Q And what did you find when you opened up the hood
12 and looked under the hood?

13 A Well, it's -- like indicated in this particular, uh,
14 photograph, Exhibit 167, the battery cables were
15 disconnected.

16 Q And that's how you found the vehicle on -- when
17 you saw it on November 7 of 2005 in your, um, bay
18 at the Crime Lab?

19 A Yes. And I believe that actually it was November 8,
20 the second day that we were doing examinations
21 that -- on that vehicle. Uh, it hadn't been checked
22 prior to this, so this is the way it would have come
23 into the laboratory.

24 Q And when you opened up the hood of the vehicle,
25 um, were you wearing gloves?

1 A Yes, I was.

2 Q And what type of gloves were you wearing?

3 A Nitron.

4 Q And -- And what are those? Why -- why are those
5 and why do you wear them?

6 A Oh. They're -- they're like a, uh -- a surgeon's
7 gloves. We put them on so we're not transferring any
8 of our DNA onto a, uh, object or piece of evidence,
9 and we're not, also, uh, receiving any evidence --
10 evidence from the object, themselves. So we're
11 protecting the surface of anything that we touch as
12 far as evidentiary value.

13 Q Thank you, sir.

14 ATTORNEY GAHN: That's all I have, Your
15 Honor.

16 THE COURT: Cross?

17 ATTORNEY EDELSTEIN: Thank you, Your
18 Honor.

19 CROSS-EXAMINATION

20 BY ATTORNEY EDELSTEIN:

21 Q Mr. Stahlke, what, precisely, if any, is actually
22 your area of specialty in the lab?

23 A Uh, I've got -- I don't have a specific specialty any
24 longer. I --

25 Q Go ahead.

1 A I have -- I'm the training -- training -- forensic
2 science training coordinator, so I have many job
3 duties.

4 Q Well, given the fact that it's a lab, I would
5 expect that that would encompass overseeing the
6 training of a multitude of, um, disciplines
7 within the lab? Is that a fair statement?

8 A Well, in my particular area, it would be more for
9 those people that are involved in field response.
10 Not any specific discipline.

11 Q Okay. All right. But you have to agree,
12 obviously, that field response encompasses a
13 multitude of disciplines; correct?

14 A Well, you hope to have some, uh, knowledge in all
15 areas, yes.

16 Q Could we call you, then, um, a jack-of-all-
17 trades in the forensic business?

18 ATTORNEY GAHN: Objection, Your Honor.
19 I'm sorry. Objection to the form of that
20 question.

21 THE COURT: Overruled.

22 THE WITNESS: Well, I would -- I would
23 probably be more considered a criminalist, and
24 that's an individual that has, uh, general --
25 general skills or knowledge in multiple areas.

1 Q All right. So you don't have a specific
2 specialty?
3 A It's not in my title, no.
4 Q Whether it's in your title or not, by way of
5 practice -- Well, let me ask you this: Besides
6 blood spatter interpretation, what other areas,
7 if any, have you testified to as an expert and in
8 courts in Wisconsin?
9 A Controlled substances.
10 Q Are we talking -- Okay. Let me just -- So I'm
11 clear, are you talking about running gas
12 chromatograph to determine what a substance might
13 be?
14 A Correct.
15 Q Okay.
16 A That's one. We have a -- With all the other
17 presumptive tests as well.
18 Q Right.
19 A Sure.
20 Q Drug -- And drug tests.
21 A Drug testing --
22 Q Okay.
23 A -- right. Controlled substances. Um, and
24 document -- questioned documents.
25 Q Anything else?

1 A Crime scenes and blood spatter.

2 Q Well, crime scenes are pretty broad; right?

3 A Correct.

4 Q Okay. Blood spatter's pretty specific?

5 A That's true.

6 Q As they would call it a sub-discipline of crime

7 scene investigation?

8 A That's true.

9 Q All right. Now, I take it during your

10 undergraduate studies that you said -- I think

11 you said that was, uh -- you had -- was it a B.S.

12 in chemistry?

13 A B.S in medical technology with a minor in chemistry.

14 Q Okay. And you've been at the Wisconsin Lab for

15 15 years; right?

16 A Approximately. It will be June, actually, when it's

17 15 years.

18 Q Okay. And in that time you -- I believe you

19 testified on direct you've testified as an expert

20 ten times over the course of the 15 years in --

21 involving blood spatter?

22 A That's correct.

23 Q Okay. So less than once a year?

24 A For blood stain cases, that would be -- if you'd take

25 the average, yes.

1 Q All right. When you first began your testimony
2 and you were describing different types of
3 stains, I believe you said there's three?
4 Passive, projected, and contact? Is that your
5 understanding?

6 A These are the three categories of types of stains,
7 yes. So -- And then each category, uh, has other
8 stains, more specific characteristics.

9 Q Okay. And where would impact stains come in?

10 A The projected stains.

11 Q All right. If an individual is struck with
12 different types of instruments, you've learned
13 over the course of your experience and training
14 that, uh, different types of patterns emerge;
15 right?

16 A There is a likelihood, or a possibility, I guess,
17 that that could have -- you could see those
18 differences, yes.

19 Q Well, don't you base much of your interpretation
20 and conclusions -- For example, State asked you
21 here a few minutes ago, um, do you have an
22 opinion about whether, uh, a body was placed in
23 the back of the RAV 4? And you -- you based --
24 You said, yes, and you based your opinion upon
25 the -- the stains that you observed; right?

1 A Wasn't your question about whether or not we could
2 distinguish the types of weapons that were used?

3 Q Well, I'm getting to that. But you -- you
4 answered that, and I assume that the answer that,
5 yes, a body was placed back there, was based upon
6 the interpretation of those patterns and stains
7 that you observed?

8 A That has nothing to do with weapons.

9 Q I understand that. You would expect, for
10 example, if a firearm were used, a different type
11 of pattern, um, than you would if someone cut
12 themselves with a -- with a knife?

13 A If I'm looking at stains that were generated from a
14 firearm or -- and comparing them to stains that were
15 generated from a passive drop or bleeding from a -- a
16 cut or a wound to the finger, yes, I would see
17 differences.

18 Q That wasn't my question. My ques -- Let -- let's
19 use this as a hypothetical.

20 A Please repeat your question.

21 Q Okay. I'll do my best. Would you expect a
22 difference in patterning from a gunshot wound as
23 opposed to a stab wound?

24 A And I would describe that as differences in their
25 characteristics.

1 Q Pard me?

2 A Yes.

3 Q In the back of the RAV 4, the blood that you

4 described that you saw over toward the speaker

5 area, not on the back, but on the side where you

6 talked about the spa -- you used your spaghetti

7 example?

8 A Correct.

9 Q Okay. I'm assuming that's where you concluded

10 that it would be consistent with the hair being

11 placed; right?

12 A That's correct.

13 Q Toward the -- Well, let me ask you this: The --

14 What were the dimensions -- the inside

15 dimensions -- of the back of the RAV 4?

16 A I have a width, is all. I don't have the -- the

17 depth of that particular cargo area.

18 Q So I take it, then, you -- you don't have an

19 opinion? Or you do have an opinion as to how a

20 body with bloody hair was placed -- located

21 within the back of the RAV 4? Do you have an

22 opinion?

23 A Yes, I do.

24 Q Other than where the head was located?

25 A I have an opinion. My opinion was that a -- an

1 individual that's 5'6 would fit in the storage area
2 of that RAV 4.

3 Q Well, probably not a total length, though; right?

4 A No.

5 Q Okay. But you don't -- you don't have an opinion
6 as to -- If that's where the head was, do you
7 have an opinion where the feet were?

8 A No. I haven't -- Common sense would say that the
9 feet were at the other end. Head at the top, feet at
10 the other end.

11 Q And somewhere in between there --

12 A Would be the torso.

13 Q Exactly. And as a mat -- and -- and the -- from
14 your examination, am I correct in stating that
15 you found absolutely no evidence by way of blood
16 pattern evidence to suggest an active wound in
17 the torso area of this body?

18 A Repeat that question.

19 Q Am I correct in stating that you found absolutely
20 no evidence, given how you believed the body was
21 placed in the back of the RAV 4, for you to
22 conclude that there was a wound in the torso area
23 of the body?

24 A There is no direct evidence from the stains that
25 were -- uh, that I examined in that particular, uh,

1 cargo area of this RAV 4 that would indicate the
2 position of those -- or location of any wounds other
3 than the ones that were indicative to bloody hair,
4 which would then indicate that that bloody hair is
5 head hair, and that there was a blood source or a --
6 you would then assume a wound to the head.

7 Q And I assume your answer would be the same that
8 you found no indirect evidence, because you said
9 there was no direct evidence that you noticed?
10 And there was no indirect? I guess I'm ask --
11 Distinguish for me, if --

12 A I can --

13 Q -- you can, the difference between direct and
14 indirect?

15 A I can tell you that those stains that were on the
16 threshold area, the stains that were on the inner
17 front panel of the rear door, I cannot, uh,
18 distinguish the location from -- on a body that those
19 stains could have originated from. They could have
20 been from anywhere on the body. Any bloody source
21 could have caused those stains when blood was flung
22 from any part of the body.

23 The only ones that I can positively
24 identify, or distinguish, from any other part of
25 the body would be the -- the stains that were

1 textbook stains for, uh, bloody head hair that
2 were transferred to the area just behind the rear
3 of the passenger seat.

4 Q Okay. Let me ask you this, then, Mr. Stahlke:
5 Given your experience, the assumptions you've
6 made about the location of the body, assume that
7 this body had at least one, and perhaps two,
8 stabbing wounds to the torso area, would you not
9 expect to find some pooled -- some blood in the
10 area between where you believe the head was and
11 where the feet were?

12 A Well, that's a fair question, and I saw some -- some
13 swipe patterns between the -- the area -- or the
14 threshold of the door, or the vehicle, and that
15 rear -- rear passenger seat. Now --

16 ATTORNEY EDELSTEIN: Your Honor, if the
17 Court please --

18 A -- outside of that --

19 ATTORNEY EDELSTEIN: Would -- would
20 the -- I hate to interrupt the witness, Your
21 Honor, but I would ask that the witness be
22 directed to answer the question. I didn't ask
23 about sweat.

24 THE COURT: It's about swiped.

25 ATTORNEY EDELSTEIN: Oh, I'm sorry.

1 THE COURT: He's talking about swipe.

2 ATTORNEY EDELSTEIN: I -- Go ahead.

3 THE COURT: I think that's part of the
4 answer. So why don't you finish your answer,
5 please.

6 THE WITNESS: Thank you. Those are the
7 only stains that I saw between -- on that
8 carpeted area in that cargo area. I would expect
9 that if we had an individual that had multiple
10 wounds, especially to the torso area, that you
11 would see additional staining.

12 Now, the lack of stains would -- may
13 indicate that you have some, uh, surface or some
14 object that was underneath, between the -- the
15 blood source and that carpeted area, which then
16 was removed with the body, let's say, and would
17 prevent any blood, then, from transferring onto
18 that carpeted area.

19 Q Well, Mr. Stahlke, in connection with your, um,
20 duties as the, uh, training coordinator for the
21 response teams -- Let -- Let -- Just let me ask
22 you this: Given what you know about this, when
23 that RAV 4 got to the lab, there's no reason for
24 you to even remotely suggest that there was
25 anything other than what appeared as the -- at

1 the carpet level, in between, prior to it coming
2 to the lab, is there?

3 A I -- No. We just examine and -- and make note of
4 those observations. This was just your -- your
5 speculation, or your -- your probing that I came up
6 with that hypothesis.

7 Q Okay. But there was nothing to suggest that that
8 hypothesis has any basis, in fact, in this
9 particular incident as far as that vehicle goes?

10 A I have no, um, reason to believe that. No.

11 Q All right. As far as the timing of when stains
12 that you discover appeared, you conducted no
13 examination to determine the relationship, for
14 example, between the stain present by the
15 ignition switch in relation to the stain you
16 observed in -- on the back door inside panel?

17 A No, I cannot determine a timeline from comparing two
18 stains in this particular case.

19 Q Or in any case?

20 A In some cases you can get a feeling for the age of a
21 stain.

22 Q Okay. But, certainly, not any degree of, uh,
23 expertise that you'd be able to render an opinion
24 on that?

25 A At least not with, uh -- within a short time frame,

1 no.

2 Q If someone's -- Have you had occasion to be
3 involved in the examination of scenes where an
4 individual has had their throat cut?

5 A Yes, I have.

6 Q Can you describe for the benefit of this jury
7 what sort of pattern is likely to result when
8 that occurs?

9 A Well, there's obviously a lot of blood, and depending
10 on the variables involved, uh, you can have a -- a
11 large amount spread over a -- a great -- a large
12 area, or you can have it confined to a small space.
13 But in either case, you'll have a -- a large amount
14 of blood directly below, uh, the area where that
15 throat was cut.

16 Q So if an individual, for example, had their
17 throat cut while they were on a bed, you would
18 expect to find a great deal of blood in that
19 area; would you not?

20 A Well, yes. Especially if the body -- if the person
21 is still alive at that point.

22 Q All right.

23 A If they -- If they're already dead, of course, then
24 there's not going to be, uh, as much blood flow
25 because there's no -- there's no heart -- or blood

1 pressure. Uh, there would be draining blood.
2 However, you -- you'd still see some blood from a
3 thro -- cut throat.

4 Q In this particular case, um, did you ever go to
5 what you understood to be the Avery property?

6 A No, I did not.

7 Q So you never were asked to go inside of a garage
8 to do any examination for blood pattern evidence?

9 A I was not involved in any of scene work there, no.

10 Q If an individual is struck from a projectile from
11 a firearm, there are distinctive patterns that
12 emerge; is that correct?

13 A If you have the classic gunshot, uh, wound, high
14 velocity spatter from a gunshot wound, uh, there are
15 some, uh, stains that are indicative of -- of that
16 type of wounding, yes.

17 Q Is it a fair statement that the patterning that
18 emerges as a result of a gunshot wound, as
19 compared to a stabbing-type wound, would tend to,
20 and typically, uh, cover, or be able to -- it
21 would -- it would spread out a little further is
22 what I'm trying to say?

23 A A gunshot wound?

24 Q Right.

25 A Not necessarily.

1 Q All right. Are there any differences between the
2 patterns that emerge from a gunshot wound to a
3 head as opposed to, for example, an arm?

4 A Yes, there are some indications, uh, that you can
5 gather from that, that would be different.

6 Q But it is fair to say that there are patterns,
7 which you understand through your training and
8 experience, that when you look at, you can
9 conclude this was as a result of a gunshot wound?

10 A Yes. If those patterns are present, uh, those
11 patterns will give you some indication of the -- or
12 may give you some indication -- of the type of weapon
13 that was used, uh, to -- to create them.

14 Q When you say "type of weapon" are you able to
15 distinguish, for example, between a small caliber
16 rifle, say a .22 caliber, and, say, a
17 .30 caliber?

18 A Typically, the larger the caliber, the greater the,
19 uh, amount of stains that are going to be present or
20 created.

21 Q You talked about the gravity effect of the -- on
22 blood on the back door inside panel. Blood does
23 not flow, necessarily, at a uniform rate, does
24 it?

25 A I believe that it would -- it would flow at a uniform

1 rate on the same or similar surface.

2 Q On the same what?

3 A Same or similar surface.

4 Q You're --

5 A So if -- if you put blood -- throw blood onto a glass

6 surface, it will flow at the same rate.

7 Q Irregardless of the source of the blood?

8 A Irregardless of the source? No. It would still be

9 the same substance that is striking the surface.

10 You're talking about a large enough amount to

11 cause -- cause the flow?

12 Q Well, you described on the back panel the flow

13 pattern? What you called elliptical; right?

14 A Um-hmm.

15 Q Okay. Of some blood that hit that back panel and

16 that basically dripped down a little bit. My

17 question is, is there a uniform flow rate for

18 human blood?

19 A I don't know that there is actually a uniform flow

20 rate, but through my experimentation and testing,

21 blood is blood. If you throw it on a similar

22 surface, it's going to flow at the same rate.

23 Q When you examined the -- Well, strike that.

24 Other than the photographs that we've all had a

25 chance to look at here today, and I'm talking

1 about the area in the back of the RAV 4 where you
2 believe there was -- there was hair, um, other
3 than the photographs, did you bring with you, um,
4 any portion of that plastic molding -- that
5 molded area -- with so the jury could see it
6 today?

7 A No, I did not.

8 Q And I take it you did not see any evidence
9 whatsoever -- Well, let me ask you: When you
10 examine those type of patterns, um, and you know
11 that it's been caused by hair, are you able to
12 tell anything about that other than the fact that
13 you believe it was hair?

14 A Well, sometimes you can get a -- an -- a feeling for
15 the -- if there was some direction. Uh, other
16 than -- other than the contact that I saw that was
17 indicative of a transfer of -- of blood from bloody
18 head hair, no, there was no other indication in that
19 stain that I could gather --

20 Q So --

21 A -- any additional information on.

22 Q So you would have no opinion as to whether or not
23 the -- How did -- I -- I want to use the same
24 term you did. Did you call it swiping? Or
25 wiping?

1 A Swipe. Well, there's swipes and wipes. One's with
2 blood and one's without blood.

3 Q Okay. The -- the portion that you talked about
4 with the -- the blood evident, though, that was
5 the swipe with the hair?

6 A Excuse me. Say that again?

7 Q I'm just talking about the hair, okay?

8 A The -- the hair transfer stain?

9 Q Right.

10 A Okay.

11 Q Okay. Was that -- do you -- you use the term
12 "swipe" for that?

13 A No, I did not.

14 Q What term did you use?

15 A That was a contact transfer.

16 Q All right. As to that particular contact
17 transfer, were you able to make -- or did you
18 make any additional findings regarding, um, for
19 example, the length of the hair?

20 A No, I did not.

21 Q Did you discern from your visual observations any
22 differences in the pattern that would set --
23 suggest that it was anything other than uniform
24 length?

25 A No, I never saw anything that would indicate.

1 Q Would you be able to determine that based upon
2 your experience, training, and education?

3 A Unlikely. Because, typically, bloody head hair,
4 uh -- it will leave a -- a textbook stain. However,
5 it won't, necessarily, tell me the entire length of
6 that -- of the hair that was on that person's head.
7 It could maybe give me an indicator of the total
8 length, but then that's, uh, a stretch, too, because
9 we don't know, uh, if it's just a portion of that
10 hair that contacted the surface, and if it -- if --
11 it could be long strands and we only get a small
12 portion that contacted the surface. So, it would --
13 we'd be guessing if we wanted to come up with an
14 entire length of that hair.

15 Q Do you understand what I mean by the -- Does the
16 term "blowback" have any significance to you in
17 your experience with, uh, blood spatter
18 examination?

19 A Yes, it does.

20 Q Okay. Is it fair to say that you performed no
21 tests, no examinations, in the lab to determine
22 whether or not there was any blowback evident in
23 this particular case?

24 A I did not.

25 Q You weren't asked to?

1 A No.

2 Q Okay. And just so everybody's aware, can you

3 explain very briefly what blowback really means?

4 A Blowback is generally related to a -- a firearm, or a

5 gunshot wound, and when a projectile leaves the end

6 of the, uh, the barrel and strikes a -- a surface

7 causing, um, some blood spatter, there is a -- some

8 energy that returns back toward the gun, and that

9 would be considered blowback.

10 Now, you can also view it as general

11 terminology, too. Anything that, uh, comes back

12 from a -- a particular wound is maybe considered,

13 as a general term, as blowback.

14 Q Right. But it -- it's not uncommon, though, in,

15 uh, a case -- an investigation involving, uh,

16 homicide, and there's a firearm involved, to

17 request that type of examination on a suspected

18 weapon? Is that a fair statement?

19 A I think that's -- that's been requested before, yes.

20 Q Fairly regularly where there's a gun involved?

21 In your experience.

22 A I -- You know, it -- it's not your, um -- your fairly

23 regular question -- or um, request, but it definitely

24 has -- does -- is requested.

25 Q And I take it you've done those type of

1 examinations previously in your career?

2 A I have examined, um, guns or firearms for the
3 presence of it, yes.

4 Q But in this case nobody asked you to do that?

5 A I did not see the weapon, no.

6 Q Okay. All right. Thank you.

7 ATTORNEY EDELSTEIN: Pass the witness.

8 ATTORNEY GAHN: Just a couple questions,
9 Your Honor.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY GAHN:

12 Q Mr. Stahlke, the blood patterns, or the blood
13 stains, that you observed in the threshold area
14 of the, uh, cargo -- of the rear cargo area of
15 Teresa Halbach's car, or on the bumper, um, you
16 would not be able to tell whether those blood
17 stains came from the head area of Teresa or any
18 other part of her torso?

19 A That's correct.

20 Q And, um, when you talked about, um, blood from a,
21 um -- a cut to the neck, or a -- a throat being
22 cut, the amount of blood would determine how
23 large the cut is? How deep it is; correct?

24 A Well, it -- it can be the size of the wound and it
25 could also be a matter of time.

1 Q I mean, if an artery or aorta or something is
2 hit, you will, but if there is -- I mean,
3 someone -- you can cut your throat shaving and
4 you're not going to have a lot of blood?

5 A No.

6 Q You can have a superficial cut to the neck and
7 there's not going to be a lot of blood?

8 A Correct.

9 Q And the same thing from your analysis, or crime
10 scenes, a single stab wound to the torso, say the
11 stomach area, or even the chest area, may be all
12 internal bleeding as opposed to any external
13 bleeding; is that fair to say?

14 A Well, that's true. And it -- There's other variables
15 as well. It could be you could have clothing on, or
16 something on that order, and it can trap the blood
17 that's -- had been, uh, leaking out of that, or
18 projected out of that, particular wound as well.

19 Q And -- and, finally, with, um, regard to blood
20 stain patterns, um, and how they're left, blood
21 stain patterns also can be, uh, cleaned up, can't
22 they, afterwards, and there wouldn't be any
23 patterns available?

24 A That's true.

25 Q Correct? And someone could use bleach to clean

1 up blood, uh, stains?

2 A Yes.

3 Q And that could destroy, um, any, uh, future
4 finding of the biological substance, or DNA, or
5 whatever it may be? Is that fair to say?

6 A That's fair to say.

7 Q Thank you. That's all I have.

8 THE COURT: Any recross?

9 ATTORNEY EDELSTEIN: Just one.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY EDELSTEIN:

12 Q There's absolutely nothing that you saw on the
13 back of that RAV 4 suggested use of bleach;
14 correct or incorrect?

15 A I do not have any -- any information of that. No. I
16 didn't see anything that would indicate that. No.

17 ATTORNEY EDELSTEIN: That's all.

18 THE COURT: All right. You may step down.

19 ATTORNEY FALLON: State would call Susan
20 Brandt. Hold on. Excuse me.

21 ATTORNEY GAHN: Your Honor, I would
22 offer, um, the exhibits, um -- just one second --
23 165, 166 and 167 into evidence.

24 THE COURT: Any objection?

25 ATTORNEY FREMGEN: No.

1 THE COURT: Received.

2 THE CLERK: Please raise your right hand.

3 SUSAN BRANDT,

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

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

8 THE WITNESS: Susan Brandt, B-r-a-n-d-t.

9 DIRECT EXAMINATION

10 BY ATTORNEY FALLON:

11 Q What do you do for a living at this time?

12 A I'm a stay-at-home mom.

13 Q All right. And, um, how many children do you
14 have?

15 A Three.

16 Q All right. What is your, um, educational
17 training?

18 A I have a Bachelor's in psychology and a Master's in
19 counselor education.

20 Q All right. And when did you receive your
21 Bachelor's Degree?

22 A I graduated, um, December of 2002.

23 Q And from which institution?

24 A The University of Wisconsin-Platteville.

25 Q And your Masters Degree, uh, when did you receive

1 that?

2 A I graduated May of 2006.

3 Q All right. And from which institution?

4 A The University of Wisconsin-Platteville also.

5 Q Directing your attention to a time period of
6 January, 2006 until May of 2006, while you were a
7 student, did you have any internship or
8 employment associated with your pursuit of your
9 Master's Degree?

10 A Yes.

11 Q And where were you employed?

12 A I was an intern at Mishicot Middle School and
13 Mishicot High School.

14 Q All right. Tell us about your internship
15 arrangement at the, uh, middle school?

16 A I had worked with, um, Karen Baumgartner in the
17 middle school guidance office in the morning, and in
18 the afternoon I worked with Amber Fox-Brewer in the
19 afternoon.

20 Q And that was at the high school?

21 A At the high school.

22 Q All right. And were you, um, at the schools on a
23 daily basis in your internship capacity?

24 A Yes. I worked, um, Monday through Thursday, and I
25 had Fridays off.

1 Q Um, directing your attention to January of 2006,
2 early January, did you have occasion to have
3 contact with a student by the name of Kayla
4 Avery?

5 A Yes.

6 Q Um, would you describe for us, um, first and
7 foremost, um, how that contact occurred?

8 A Kayla came into the counseling office and asked to
9 speak to a counselor.

10 Q All right. And, um, who was present when she
11 came in and asked to speak with a counselor?

12 A It was myself and Karen Baumgartner.

13 Q Tell us what happened?

14 A Kayla came in, um, to the office, and, um, she was
15 asked by Ms. Baumgarner -- Ms. Baumgartner if she
16 minded that I was there, and Kayla said, no. And she
17 said she was there because she was feeling scared.

18 Q All right. Let me stop you there, first, and ask
19 who else, if anyone, was present for this
20 conversation?

21 A No one else.

22 Q All right. So there's just the three of you?

23 A Correct.

24 Q All right. And did Kayla reveal to the two of
25 you why she was feeling scared and why she wanted

1 to talk?

2 A Yes.

3 Q And what did she tell you?

4 A She told us that she was scared, um, because her
5 uncle, Steven Avery, had asked one of her cousins to
6 help move a body.

7 Q All right. What else, if anything, did she tell
8 you about that?

9 A She also said she was scared about going to the shop,
10 um, and she, specifically, asked if blood can come up
11 through concrete.

12 Q All right. Now, was -- Did she identify which of
13 her cousins may have been asked by her uncle,
14 Steven Avery, to move this body?

15 A No.

16 Q All right. Describe for us, if you will, Kayla's
17 demeanor, her affect, during these revelations?

18 A She -- She was scared.

19 Q All right. Did she seem at all confused?

20 A No.

21 Q Was this the first time you, um, ever, uh, had
22 contact with Kayla?

23 A Yes.

24 Q All right. Um, your best estimate, approximately
25 how long did this conversation take?

1 A My best guess would be 15 or 20 minutes.

2 Q All right. How was Kayla's demeanor at the
3 conclusion of this discussion?

4 A I think she still felt scared, but maybe a little bit
5 more relieved.

6 Q All right. Did she, at the end of the
7 conversation, um, seem confused by anything that
8 she was telling you?

9 A No.

10 ATTORNEY FALLON: I'll pass the witness.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY ATTORNEY FREMGEN:

14 Q You said this was the first time you've met
15 Kayla?

16 A Yes, that's correct.

17 Q So you had no perspective as to what her normal
18 demeanor is?

19 A No.

20 Q Don't know if she's normally a scared girl?

21 A No.

22 Q You had, uh, no way of telling whether she was
23 telling you the truth; correct?

24 A Correct.

25 ATTORNEY FALLON: Objection. Improper

1 question. Commenting on the veracity.

2 THE COURT: I -- You're correct. Uh, the
3 objection's sustained. Credibility is solely to be
4 judged by -- by this jury.

5 ATTORNEY FALLON: Move to strike.

6 THE COURT: Motion granted. Question is
7 struck.

8 Q (By Attorney Fremgen) You don't have any --
9 Again, because this is the first time you met
10 her, you don't know her reputation for telling
11 the truth; correct?

12 A Correct.

13 Q Now, you indicated that you had both, uh, a -- a
14 Bachelor's Degree and -- were -- did you have a
15 Master's at this point?

16 A No.

17 Q Were you working on it? This was the internship
18 portion of the Master's?

19 A Correct.

20 Q And you've taken a number of classes in child
21 development?

22 A Yes.

23 Q Number of classes, uh, or courses of study that
24 deal with, um, children in general?

25 A Yes.

1 Q It -- Is it fair to state in your studies that,
2 uh, one -- maybe not a common -- theme with
3 children is that they sometime -- sometimes are
4 looking for attention; is that correct?

5 A Sometimes.

6 Q Okay. And they do things that sometimes it's
7 just intended to draw attention to themselves?

8 A Correct.

9 ATTORNEY FREMGEN: I have nothing else.

10 THE COURT: Any redirect, Counsel?

11 **REDIRECT EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q Was there any point during this meeting that you
14 thought she was just there to get some attention?

15 A No.

16 ATTORNEY FALLON: That's it.

17 THE COURT: All right. The witness may
18 step down.

19 ATTORNEY KRATZ: State would call Jodi
20 Stachowski to the stand.

21 THE CLERK: Please raise your right
22 hand.

23 **JODI STACHOWSKI,**
24 called as a witness herein, having been first duly
25 sworn, was examined and testified as follows:

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

3 THE WITNESS: Jodi Stachowski,
4 S-t-a-c-h-o-w-s-k-i.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q Ms. Stachowski, you'll have to speak right into
8 the microphone so that we can all hear what
9 you're saying. Ms. Stachowski, in, um -- during
10 the year 2005, and up to and including Halloween
11 of 2005, were you involved in a, uh, relationship
12 with an individual?

13 A Yes, I was.

14 Q Who was that relationship with?

15 A Steven Avery.

16 Q And what, in fact, was your relationship with
17 Mr. Avery during that year?

18 A I was his fiancé.

19 Q Ms. Stachowski, I'm going to direct your
20 attention to October 31 of 2005, uh, ask if you'd
21 tell the jury, please, where you were physically,
22 uh, located that day, if you recall?

23 A I was in the Manitowoc County Jail.

24 Q And can you tell the jurors, please, why it was
25 that you were in jail at that time?

1 A For a fifth drunk driving.

2 Q All right. During your stay at the Manitowoc
3 County Jail, uh, which included, uh, Halloween of
4 2005, did you have occasion to remain in contact
5 with your then fiancé, Steven Avery?

6 A Yes, I did.

7 Q When was it, Ms. Stachowski, that you went into
8 jail? That is, when was it that you had to
9 report to jail, if you can remember?

10 A I believe it was in August.

11 Q All right. And how long of a stay? That is, how
12 long were you scheduled to be in jail from
13 August, '05?

14 A Seven months.

15 Q Between August, then, and October 31 of '05, uh,
16 how regularly would you remain in contact with
17 Mr. Avery?

18 A I talked to him once a day.

19 Q Were there any occasions, Ms. Stachowski, when
20 you would talk to Mr. Avery on more than one
21 occasion during a particular day?

22 A Yeah.

23 Q All right. And how would those conversations
24 occur? In other words, were they in person or
25 were they on the telephone?

1 A On the telephone.

2 Q Could you tell the jurors, please, how those

3 phone calls would be placed? That is, would you

4 place the calls to Mr. Avery or would he call

5 you?

6 A I had to call him collect.

7 Q Let me ask you, Ms. Stachowski, do you remember

8 October 31 of 2005? And, specifically, do you

9 remember placing any calls to your fiancé, Steven

10 Avery?

11 A Yes.

12 Q On October 31, 2005, on how many occasions did

13 you talk to Mr. Avery?

14 A I called Steven twice that day.

15 Q And could you tell the jurors about what times

16 those two calls were placed?

17 A The first one was about 5:30, and then the second one

18 about 9:30.

19 Q All right. Are those estimates, Ms. Stachowski?

20 A As close as I can remember, yes.

21 Q How long would those phone calls last?

22 A Fifteen minutes.

23 Q And how do you know they lasted 15 minutes? In

24 other words, was there something with the jail

25 that --

1 A Yeah. They just disconnected after 15 minutes.

2 Q All right. Ms. Stachowski, the last area of --

3 of inquiry I have for you for this trial is the,

4 um, arrangement or setup of Mr. Avery's, um,

5 trailer. First of all, are you familiar with,

6 uh, Mr. Avery's, um, residence? With his

7 trailer?

8 A Yes.

9 Q Did you live in that trailer prior to you having

10 to go to jail in August of '05?

11 A Yes, I did.

12 Q And at the time that you lived there, did you and

13 Mr. Avery share the same bedroom?

14 A Yes.

15 Q Describe, if you will, um, the kind of furniture

16 that Mr. Avery had, or that you and Mr. Avery

17 shared, in his bedroom? Uh, that is, prior to

18 you going into jail.

19 A There was the bed, a filing cabinet, a desk, a

20 bookcase, dresser, and a TV.

21 Q All right. Do you remember, Ms. Stachowski,

22 prior to your going into the jail, if Mr. Avery

23 had any, uh, gun racks or firearms on the wall?

24 A There was a gun rack with two guns on the wall.

25 Q Do you know what kind of guns those were? If you

1 don't, that's fine. I'm just --

2 A No.

3 Q -- just asking. All right. I'm going to show

4 you what has been received as Exhibit No. 73.

5 This is a computer-generated diagram. Um, first

6 of all, at least from the standpoint of having a

7 bed, uh, a desk, a bookcase, uh, and a

8 nightstand, or filing cabinet, and a dresser,

9 assuming that's what that is down there, uh, is

10 that the same kind of furniture that Mr. Avery

11 and you had in that bedroom before you went into

12 jail?

13 A Yes.

14 Q Now, before you went into jail, looking at

15 Exhibit No. 73, was the room set up or configured

16 that way?

17 A No, it wasn't.

18 Q Could you tell the jurors, please, how it was

19 different? What -- First of all, where was the

20 bed when -- uh, when you went into jail? How was

21 it situated?

22 A In the corner underneath the two windows. When you

23 first walk in the door, you'd walk straight into the

24 bed.

25 Q All right. And so if I'm taking a laser pointer,

1 uh, and pointing, um, what would be to the, uh,
2 top right, or towards the bottom left, uh, is it
3 a fair characterization that the bed was facing
4 this way?

5 A Yes.

6 Q Which, uh, side, or which wall was the headboard
7 on?

8 A The headboard was on the farthest wall, the small
9 window.

10 Q And I'm pointing, uh, to, uh, the wall, which
11 would be the east wall, of the trailer. Um, is
12 that the wall that the headboard was on?

13 A Yes.

14 Q The headboard was here and the bed was, uh,
15 along, um, that way; is that -- is that correct?

16 A That's correct.

17 Q Okay. Now, was the bed all the way against this
18 right-hand or, uh, south wall, or was it away
19 from the wall?

20 A It was against the wall.

21 Q So it was abutted all the way up against --

22 A Yeah.

23 Q -- the wall? The, um -- This bookcase, um, that
24 we see, uh, depicted in Exhibit No., uh, 73, can
25 you tell us where that was located while you were

1 there?

2 A That was located on the wall where the bed is

3 underneath the guns.

4 Q All right. And where was the nightstand?

5 A Next to the bed.

6 Q Um --

7 A Like right there. Yeah.

8 Q Would be right next to the door?

9 A Yep.

10 Q So the nightstand would be here, and the bed

11 would -- would -- would be this way right next to

12 it; is that right?

13 A Yes.

14 Q All right. A -- assuming that this dresser --

15 and I can show you another version if I need

16 to -- but assuming the dresser is kind of

17 kitty-corner, uh, in the, uh, southwest corner of

18 the bedroom, would that have been in about the

19 same place?

20 A Yes.

21 Q I'm going to show you one more photo just to kind

22 of orient us. This is Exhibit No. 75. I think

23 you've told us that the bed was along, uh, this

24 wall with the headboard underneath, uh, the east

25 window; is that correct?

1 A That's correct.

2 Q As you looked down this hallway, then -- This is
3 a hallway; is that right?

4 A Yes.

5 Q As you looked down this hallway, uh, and through
6 the open doorway, uh, would you be able, then, to
7 see the bed?

8 A Yes, you would.

9 Q All right.

10 ATTORNEY KRATZ: That's all the
11 questions today for Ms. Stachowski, then, Judge.
12 Thank you.

13 THE COURT: Counsel? Cross?

14 ATTORNEY FREMGEN: I guess I just have
15 one -- Excuse me. I just have one question.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY FREMGEN:

18 Q Your testimony is essentially that the
19 configuration of the bedroom in August is
20 different than the picture here?

21 A Yes.

22 ATTORNEY FREMGEN: Nothing else.

23 THE COURT: All right. You may step down.

24 ATTORNEY KRATZ: This might be a good
25 time for our afternoon break, Judge.

1 THE COURT: All right. We'll take 15
2 minutes. We'll be back at approximately quarter --
3 well, ten -- ten of three.

4 (Recess had at 2:33 p.m.)

5 (Reconvened at 2:54 p.m.)

6 THE COURT: Your next witness, Counsel?

7 ATTORNEY FALLON: State would call
8 Mr. Tom Sturdivant.

9 **THOMAS STURDIVANT,**

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

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

14 THE WITNESS: Special Agent Thomas Allen
15 Sturdivant. It's S-t-u-r-d-i-v-a-n-t.

16 **DIRECT EXAMINATION**

17 BY ATTORNEY FALLON:

18 Q What do you do for a living?

19 A I'm a special agent with the Wisconsin Department of
20 Justice, Division of Criminal Investigation,
21 Narcotics Bureau.

22 Q How long have you been employed for the Wisconsin
23 Department of Justice?

24 A Since 1998.

25 Q Prior to that time, did you hold any other law

1 enforcement, um, positions?

2 A I did. I worked for the, uh, Maine State Police in
3 the state of Maine.

4 Q And how long did you work for the Maine State
5 Police?

6 A Approximately 11 years.

7 Q Uh, you indicated your current assignment is the
8 Narcotics Bureau for the Division of Criminal
9 Investigation. Prior to that assignment, did you
10 have any other assignment?

11 A Yes. I worked in both the Financial Crimes Bureau,
12 as well as the Arson Bureau.

13 Q And how much time did you spend in the Arson
14 Bureau?

15 A Approximately two years.

16 Q During what time frame would that have been
17 roughly?

18 A Uh, that would be roughly between 2003 and 2005.

19 Q All right. Now, Mr. Sturdivant, I'd like to
20 direct your attention to, uh, Tuesday afternoon,
21 November 8, 2005. At that particular time were
22 you currently in the employ of the Department of
23 Justice?

24 A I was.

25 Q All right. Uh, on that particular day were you

1 asked to assist in execution of a search warrant
2 at the Avery Salvage Yard?

3 A I was.

4 Q And where is that salvage yard located,
5 generally? Which county?

6 A Uh, Manitowoc County.

7 Q All right. What, um, in particular, on that day,
8 were you asked to do?

9 A I was asked to do a couple of things. One was to
10 execute a search warrant at the Avery business. The
11 junkyard business. And, secondly, I was asked to go
12 out and take a look at so-called hot spots. These
13 were just areas that were identified by the state
14 troopers as having some, um -- some -- some areas of
15 interest. Perhaps they might have been ashen sites,
16 they might have been a motor vehicle, they might have
17 been a variety of other things.

18 Q All right. And in terms of, um, one of these
19 spots, was there a time where you were asked --
20 or your attention was directed to an area behind
21 the garage identified as Steven Avery's garage?

22 A Yes. Uh, sometime after 1:30, I was asked to go over
23 and take a look at some of these so-called places
24 that -- of interest, and one happened to be a -- a --
25 behind the Steven Avery garage, and, uh, Manitowoc

1 officer, Jason Jost, was standing over what, uh, in
2 my opinion, was a -- a piece of charred, uh, bone
3 matter, which was about, uh, um, six or eight feet
4 from the pile of dirt behind the garage.

5 Q All right. And how was your attention directed
6 to that area?

7 A I think at some point, um, we were asked to go out --
8 uh, prior to 1:30 -- go out and take a look at some
9 of these places of interest. And as I walked over
10 there, myself and Special Agent Deb Straus were
11 basically summoned by, uh, Deputy Jost to come over
12 and take a look at an item that he was standing, uh,
13 near.

14 Q All right. And when your attention was directed
15 to that area, what did you, um -- what did you
16 do?

17 A Well, the first thing I did is when I walked over
18 and -- and -- by the deputy, he pointed out this
19 piece of material that was lying on the ground, which
20 appeared to be about, uh -- about one inch in
21 length -- one -- one inch by one inch, which appeared
22 to me, again, to be a piece of charred bone matter.

23 Q All right. Um, and to begin with, I'd like to,
24 uh -- the skee (phonetic) the screen to, uh,
25 project, uh, Exhibit 132, um, first, and then,

1 uh, we're going to have two more photographs
2 marked.

3 Um, your attention is directed either to
4 the screen in front of you or the one to your
5 immediate left. Um, do you recognize that
6 particular area? Exhibit 132?

7 A I do.

8 Q All right. Tell us about that. What is depicted
9 there?

10 A What is depicted here is a -- What is depicted here
11 is a pile of gravel, which I estimated to be
12 approximately 30 feet by 30 feet, um, which gradually
13 rises to approximately two feet in height, and it's
14 sand and gravel piled up on the natural landscape.
15 And this was directly behind the -- Steven Avery's --
16 the, uh, detached two-car garage.

17 And in the center of this pit -- And in
18 the center of this, uh, 30-foot by 30-foot pile
19 of gravel here was what I considered a -- or I --
20 I refer to it as a burn pit, which is about six
21 feet wide, and it appeared to me as though
22 somebody had come in with a six-foot scoop and
23 scooped out six feet of this gravel. This
24 wasn't -- The -- This pile of gravel wasn't
25 natural to the landscape. It had been placed on

1 top of the grass behind Steven Avery's garage.

2 Q All right.

3 A And the piece of bone fragment that I initially --

4 Q We'll get to that in just a minute. I think we

5 have, uh, two more other photographs in front of

6 you that might be illustrative. Um, what are the

7 exhibit numbers on those photographs, please?

8 A The first one I looked at was Exhibit 0-4-1-8-0-7.

9 I'm sorry, 06 CF 88. Exhibit 168.

10 Q Exhibit 168?

11 A Yes.

12 Q Thank you. All right. And, um, we're going to

13 have that projected in just a moment. All right.

14 Now, um, the exhibit which is depicted on the

15 screen now, is that 168?

16 A Yes, it is.

17 Q All right. Now, um, is that a fair and accurate

18 portrayal of this burn area at the time you first

19 set eyes on it?

20 A Yes, it is.

21 Q All right. We note that there is a, uh -- a

22 German or Belgian Shepherd appearing there?

23 A Yes.

24 Q Uh, was that dog present when you first

25 discovered the area?

1 A Yes, it was.

2 Q Uh, tell us about that particular dog, if you
3 would?

4 A This was a large German Shepherd-type dog that was
5 a -- very aggressive, and would actually lunge at
6 people as they walked towards this mound of dirt.
7 The doghouse was positioned on top of the dirt and
8 the dog could reach, um, around the mound of dirt.
9 Um, and, again, it was -- it was barking, it would
10 lunge at people, and -- and I was also told that the
11 dog might have bit a, uh, trooper.

12 ATTORNEY EDELSTEIN: Um, that -- that's
13 hearsay. Ask that it be stricken.

14 ATTORNEY FALLON: It's not a matter,
15 uh --

16 THE COURT: It will -- It will --
17 Objection's sustained. Strike that last remark
18 about the dog biting.

19 ATTORNEY FALLON: All right.

20 Q (By Attorney Fallon) Now, I note that there is a
21 red, um, box-like, or shed, um, item which
22 appears on the left-hand side of the photograph.
23 What is that?

24 A That is the doghouse.

25 Q All right. Now, um, you have one other

1 photograph in front of you. Let's talk a little
2 bit about that.

3 A Okay.

4 Q Which photograph -- What exhibit number is that?

5 A That's Exhibit 169.

6 Q All right. And what is depicted in Exhibit 169?

7 A Depicted in this photo are a number of things. The,
8 uh, swirl from the, uh, steel belt from the tires.

9 Q Let's use your, um, pointer, if you would, and --

10 A Sure.

11 Q -- identify for us what you believe is
12 steel-belted wiring?

13 A This is -- This is what I believe to be steel-belted
14 wiring from steel-belted tires. Another tire. Uh,
15 this is a burned out, uh -- the burned out --
16 completely consumed, um, uh, seat from a, uh -- what
17 I thought might be a bench seat from a van. Um,
18 also, in here, was, uh, what I believed to be bone
19 fragment intertwined within the steel-belted, uh,
20 tire, um, stuff here.

21 Q All right. All right. Let's take these a little
22 bit, um, at a time. What was the first thing
23 about this area that drew your attention to this,
24 um, pit area as being, perhaps, somewhat
25 significant? Or at least interesting?

1 A Well, the first thing that drew my attention to this
2 burn pit was the bone fragment that was approximately
3 eight feet away from the burn pit. As you're looking
4 at this photo, that piece of bone fragment was about
5 eight feet out this way.

6 Q All right. We're going to switch back to
7 Exhibit -- I believe it was 168?

8 A Okay.

9 Q And, um, does that help you assist, perhaps, in
10 placing the area where the fragment is?

11 A Yes, it does. The bone fragment's located, I
12 estimated, about eight feet away from the -- the burn
13 pit.

14 Q All right. Upon discovering that fragment, what
15 did you do?

16 A I -- I looked at the fragment. I did not touch it.
17 And I was curious about this pit, so I walked over
18 towards the burn pit, looked at the burn pit, and
19 noticed what I believed to be other or additional
20 burned or charred bone matter within this pile of
21 debris and around the burn pit.

22 Also, there was what I believed to be
23 bone fragment intertwined in the steel belts --
24 the steel -- of the steel-belted, uh, material
25 here. And the other thing I did is I -- I had a

1 twig, I moved -- there were leaves in this --
2 there's some leaves here, and I moved a couple
3 leaves, and noticed what I thought to be was, uh,
4 skull matter or skull bone fragments, um, within
5 the -- the, uh, debris pile.

6 Q All right. Now, there -- Yeah. There appear to
7 be other implements, um, near the, uh, burn pile.
8 Um, could you identify those for us?

9 A Yes. I noticed a shovel, which was of a spade
10 design. I also noted a hammer, um, a rake. There
11 was a rake here as well. A screwdriver, um, and some
12 other things, uh, within the burn area.

13 Q All right. Upon making, um -- We're going to
14 have a few exhibits brought in for you to
15 examine. I'm having Investigator Wiegert hand
16 you what is marked as Exhibit 170. Do you
17 recognize that item?

18 A Yes, I do.

19 Q And what is Exhibit No. 170?

20 A This is the rake that was, uh, at the -- the burn
21 site.

22 Q All right. And that is the one. All right. And
23 if we could have the officer show you 171? While
24 Investigator Wiegert is, um, taking that out,
25 just so the record is clear, would you describe

1 the condition of the rake first?

2 A It's, um -- It's a handled rake, um, certainly
3 partially burned. Um, the handle is partially -- or
4 the, uh, rake, itself, is somewhat oxidized or
5 rusted, and it's got leaves, and, um, metal, uh,
6 perhaps steel belt, um, stuck in some of the, uh --
7 the rake blades.

8 Q From your time in the, uh, Arson Bureau, you --
9 are you familiar with the phrase, "alligatoring
10 effect"?

11 A In terms of the burn?

12 Q Yes.

13 A Uh, to -- to a certain extent.

14 Q All right. Well, do you see any particular type
15 of -- What -- What's the degree of burning on
16 that, um -- that rake?

17 A Well, the burning is -- is -- is at the bottom, and
18 working its way towards the top, meaning that more
19 heat was applied to the bottom of this than the top.
20 Therefore, you've got more charring and more burning
21 from the bottom up.

22 Q All right. What do you call, in your experience,
23 the -- that ridge-like effect on the wood that
24 you're holding?

25 A The, um -- the specific name, um, escapes me but --

1 Q Okay.

2 A -- um -- But, you know, the heat -- By looking at
3 this, you can tell that it burned more from the
4 bottom than from the top, and it was used -- or
5 that -- in the fire at the bottom.

6 Q All right.

7 A So --

8 Q And the handle of that rake is made out of what
9 substance, just --

10 A Wood.

11 Q -- so --

12 A Wood.

13 Q Very good. All right. Would you take it -- a
14 look at Exhibit 171, please? Do you recognize
15 Exhibit 171?

16 A Yes, I do. Um, this is the spade that was at the
17 scene, um, as depicted in the photo as well, um, that
18 I observed, uh, near the burn pit, um, on November 8.

19 Q All right. And if you would, what is the handle
20 of the spade made out of?

21 A This would be a, uh -- a wood as well.

22 Q All right. And describe the condition of, first
23 of all, the spade, itself? The shovel portion of
24 the --

25 A The -- the -- the bottom of the shovel, the metal

1 part is what I would refer to as a spade, and it does
2 show some signs of, also, being exposed to fire, um,
3 with some of the charring, um, at the bottom of the
4 blade, towards the blade, itself.

5 Q All right. Does the blade appear to be somewhat
6 oxidized?

7 A Yes, it does.

8 Q Is that an unusual occurrence for metal being
9 exposed to fire?

10 A No.

11 Q All right. Very good. I'll have Investigator
12 Wiegert take that from you. Now, after you made
13 the discovery of the bone fragment, which was
14 about eight feet in front of the area that you've
15 described, and then you said -- you indicated you
16 used, perhaps, a twig or something to move some
17 leaves to get a closer look at some of the other
18 items directly in the -- the darkened area, which
19 is depicted in, uh, Exhibit 168, um, which is
20 portrayed on the screen, I believe?

21 A Yes.

22 Q All right. After you made these discoveries,
23 what did you do?

24 A After -- after the bones, or bone matter, or charred
25 matter, was discovered, at that point we made several

1 phone calls. We attempted to, um, contact some of
2 the arson folks and have them come over. They were
3 busy with other issues. We also contacted the Crime
4 Lab folks, and because they were busy processing
5 other, uh, scenes, it was probably, uh, an
6 hour-and-a-half or so before the Crime Lab actually
7 arrived at the burn pit.

8 Q All right. And who, in fact, arrived at the burn
9 pit to assist you?

10 A The, uh -- The Crime Lab personnel were, um, John
11 Ertl, uh, Chuck Cates, and Guang Zhang. Um --

12 Q All right. Prior to their arrival, did you
13 attempt any processing of the pit yourself?

14 A Absolutely not.

15 Q All right. Um, when they arrived, tell us how
16 the pit was processed?

17 A When the Crime Lab arrived at the scene, um, John
18 Ertl and others, as -- as well as myself and Deputy
19 Jost, assisted with erecting a sifting apparatus.
20 And this is just not something one person can erect.
21 It's a large, um, tripod-type to -- um, piece of
22 equipment, and so it took a -- a couple of us, uh, to
23 erect this thing. It's, again, a large tripod. It
24 probably stands eight feet off the ground.

25 And from that, um, after -- after

1 putting up the tripod, we then attached sifting
2 devices, which were probably two feet in width
3 and maybe four feet in length, and, uh, begun to
4 sift through that debris pile.

5 Q All right. And, um, how did this sifting
6 actually mechanically occur?

7 A John Ertl, and some of the other Crime Lab folks,
8 actually scooped up that debris material with a -- I
9 believe a flat shovel, if I'm -- if my memory serves
10 me correctly, placed that onto those sifting screens,
11 which were, again, I think, two feet wide by four
12 feet in length. There may have been more than one
13 sifter. And as the debris is placed on top of what
14 we sorted, and we picked out things that we felt were
15 either bone fragments, teeth, um, metal grommets,
16 zipper, uh, a, uh, piece of a metal belt buckle, and,
17 um, so as we sifted through that, we took those
18 things out that we thought might be bone matter and
19 other things that might be of importance, and then
20 placed those items into a box, um, that, uh, was
21 turned -- or -- or -- that the Crime Lab took with
22 them after we completed sifting that pile of debris,
23 which is right there.

24 Q All right. I'm showing -- I'm having
25 Mr. Fassbender, um, show you Exhibit 172. If you

1 would take a moment to examine that exhibit? Do
2 you recognize Exhibit 172?

3 A Yes. This is -- This is the, uh, zipper that we
4 picked out of the -- the debris that we were sifting
5 through --

6 Q All right.

7 A -- from this pile.

8 Q All right. Are there any particular markings or
9 anything on that zipper?

10 A Yes, there are.

11 Q And would you tell us what they are, please?

12 A They are in capital Y-K-K.

13 Q All right. Very good. Thank you. Approximately
14 how long did, um, the sifting process take that
15 you engaged in?

16 A I think -- I would -- I would just have to guess, was
17 roughly two hours, and that included the time that we
18 actually set up the apparatus, the sifting, and we
19 sifted rapidly due to -- due to, uh, darkness.

20 Q All right. And you indicated the presence of
21 other, uh, implements or items, uh, in the
22 general area of the pit?

23 A Yes.

24 Q I'd like you to, first of all, if you can recall,
25 what was -- what implements, if any, were

1 actually found in the darkened area, which looks
2 like the burn part? If you could recall what --
3 what was found in that part?

4 A I believe there was a screwdriver, hammer, um, of
5 course, this, um, steel-belt wiring, a hacksaw blade,
6 and I believe that was it to the best of my
7 recollection.

8 Q I'm having Investigator Fassbender show you
9 Exhibit 173. Uh, is there, uh, an item depicted
10 in there?

11 A Yes. It's --

12 Q Is that --

13 A It's a screwdriver.

14 Q We'll have that projected in just a moment. That
15 is the screwdriver that you were, um, just
16 speaking of?

17 A Yes.

18 Q Uh, the photograph also appears to depict some
19 circular wire material?

20 A Yes. In -- in -- in my opinion, this was more steel
21 belt -- steel-belt wiring.

22 Q All right. Very good.

23 A And that was Exhibit 173.

24 Q As, um, five o'clock drew near, what did you do?

25 A As -- As darkness was nearing, um, we sifted what we

1 could, um, and I felt it was important to pick
2 this -- these items up and get them to the Crime Lab,
3 because at this point in time we don't know if Teresa
4 Halbach is alive or dead. So it was important, with
5 the impending darkness, to sift through this stuff,
6 do it fairly quickly, be thorough, pick out what we
7 could, and then get that to the Crime Lab so the
8 Crime Lab could analyze that and make some sort of
9 determination.

10 So after -- after we sifted through the
11 remaining debris -- And we sifted this on top of
12 a tarp that I think was six feet by eight feet.
13 So the stuff that we sifted through we collected,
14 we double- and triple-bagged that debris that was
15 depicted in the picture, and placed that into the
16 Calumet County, uh, evidence van, if you will.

17 So --

18 Q All right. And how was the pit preserved, if at
19 all, when you were done?

20 A The pit -- Uh, we placed a tarp over the pit so that
21 if this, in fact, turned out to be Teresa, that we
22 would then go back and more closely examine that pit
23 and, um -- a little closer.

24 Q We're going to have you identify one more
25 exhibit. Uh, Investigator Wiegert, um, prepared

1 the exhibit for your examination. This may
2 require you to step off of the stand. I'm not
3 sure how -- what your view will be. Just bear
4 with us one moment. Um, Mr. Sturdivant, would
5 you step forward? Um, I'll share my microphone
6 with you so everyone can hear.

7 A Um-hmm.

8 Q Uh, we've had now produced, um, an exhibit marked
9 174. And do you recognize it?

10 A I -- I don't know that I need it. I do. And then
11 maybe we put up photo 169 or --

12 Q Sure.

13 A -- and I can just point that out to you.

14 Q Yep.

15 A This is a -- in my opinion, just a -- a burned out,
16 um, bench seat frame from a motor vehicle that is
17 clearly completely consumed. That was to the -- if
18 you -- as you're facing this pit, if it's directly in
19 front of us, this -- this seat, or bench seat, was
20 immediate to the right, or the edge of it, towards
21 the -- the burn pit.

22 Q All right. And just so it's clear, Exhibit 174,
23 is this the seat which you observed at the scene
24 and which is depicted in Exhibit 169?

25 A Yes, it is.

1 Q All right. You may have your seat. Thank you.
2 Does it appear to be in substantially the same
3 condition as it was when, um, you first observed
4 it?

5 A It does.

6 ATTORNEY FALLON: Your Honor, at this
7 time I would, um, move into evidence Exhibits 168
8 through 174. Upon their receipt, uh, would
9 tender the witness for cross-examination.

10 THE COURT: Any objection, Counsel?

11 ATTORNEY FREMGEN: No objection.

12 THE COURT: Uh, items 168 through 174 are
13 received. And you may cross.

14 ATTORNEY FREMGEN: Thank you.

15 **CROSS-EXAMINATION**

16 BY ATTORNEY FREMGEN:

17 Q If I could just use those photographs? Thank
18 you.

19 A You're welcome.

20 Q While I'm doing this, if I could ask you a couple
21 of questions. Maybe a silly question, but I
22 don't un -- I don't know the answer to this. As
23 you looked at each item, you put on a pair of
24 gloves; correct?

25 A Yes, I did.

1 Q Why do you do that?

2 A Well, because there's -- For one, there's, um, soot

3 on the items. And, two, to keep my hands clean.

4 And, secondly, just because it's something you

5 typically do when you're processing evidence.

6 Q So you -- It's just a normal occurrence for you

7 in your -- probably from being a -- a crime scene

8 tech for so long that you just, second nature,

9 grabbed some gloves?

10 A Yes.

11 Q I'm not a crime scene tech so that's why I --

12 (inaudible.)

13 A I'm not a crime -- crime scene technician, either.

14 Q Okay. This is, uh, Exhibit 169? The picture?

15 A Yes, sir.

16 Q And this, I believe you testified to, was

17 essentially the van seat with some steel-belted

18 tire wiring wadded up; correct?

19 A Yes, sir.

20 Q And just behind that is a tire; correct?

21 A Yes.

22 Q Obviously, that tire doesn't look burned --

23 A No.

24 Q -- correct? Is this the way the scene looked

25 when you got to this fire pit area?

1 A I do not recall some of these red flags being in
2 the -- in the crime scene.

3 Q The van seat, itself, though, was not on the
4 actual ashened area of the pit? It was off to
5 the side like this?

6 A The van -- The van seat was close to the edge of the
7 burn pit, and this -- there -- we don't have -- this
8 isn't a complete photo, so I'm not certain how close
9 that is to the pit.

10 Q So did someone move the van seat to where it's at
11 now?

12 A It's hard to depict from this photo exactly where the
13 burn pit is, but the seat was located -- that's
14 your -- that's a -- that's -- that's a fairly
15 accurate representation of where that seat was.

16 Q Okay. I -- I guess I was under the impression
17 from your previous answer that that -- you said
18 that the van seat, itself, was somewhere in this
19 area when you first arrived?

20 A Maybe we can get a better photo, but the van seat was
21 to the immediate right of the burn pit.

22 Q Okay. I'll show you Ex -- Exhibit 168 again.
23 The large -- larger picture of the burn pit?

24 A Yes. The seat would have been right here, right
25 beside the pile of steel-belted wire.

1 Q Do you know who moved it?

2 A I do not.

3 Q Was it, uh, some other -- some other officer or

4 someone else that was at the scene before you?

5 A I assume that was moved after the scene. Probably

6 taken into evidence.

7 Q Agent, I'm going to show you what's been marked

8 Exhibit 175. Can you describe what that picture

9 or photograph shows? And then I'll put it on

10 the --

11 ATTORNEY KRATZ: If you just hit one,

12 it's all cued up.

13 ATTORNEY FREMGEN: Great.

14 Q (By Attorney Fremgen) Now, using this

15 photograph, can you better --

16 A Yes.

17 Q -- describe --

18 A Um-hmm.

19 Q Okay.

20 A All right. This -- This is the burn pit, and this is

21 a seat to the right of the burn pit.

22 Q Okay. But as far as you know, the seat, itself,

23 had not been on the -- the burn pit area where --

24 the sunken area when you arri -- rived. It was

25 where it is --

1 A It was --
2 Q -- now in the picture?
3 A Right. It was not -- The burn -- The -- The seat was
4 not on top of the debris pile. It was to the right.
5 Q Okay. Now, you indicated you found some
6 smallen (phonetic) -- what you believed to be
7 smallen pieces of bone in the -- that large wad
8 of steel belts?
9 A Yes.
10 Q Did you find any in the van seat?
11 A No. The, uh -- The bone material was intertwined in
12 all this steel belt.
13 Q You -- you mentioned that what drew your
14 attention to this area in particular was having
15 seen a small bone fragment about eight feet from
16 the front end of the bone -- of the burn pit?
17 A Yes, sir.
18 Q And about how big a bone fragment was it?
19 A As I estimated, it was about one inch by one inch.
20 Just a small bone fragment.
21 Q Could you tell by looking at that bone fragment
22 whether it was human or animal?
23 A I could not.
24 Q Do you have expertise in bone fragments? Being
25 able to distinguish between human and the -- and

1 the animal?

2 A I do not, sir.

3 Q When you refer to a skull bone fragment in the

4 burn pit, you don't have an expertise that it's

5 distinguished between skull fragments and other

6 fragments?

7 A No, sir.

8 Q You were just assuming?

9 A Wasn't assumption. I think what -- what I -- I

10 testified to is I thought that it was important that

11 we pick these bones up and have them analyzed to

12 determine whether or not they were human bones and

13 Teresa Halbach's.

14 Q Okay. But, I mean, at the time you arrived --

15 arrived at the scene, you didn't know what they

16 were?

17 A I did not, sir. No.

18 Q But they at least provided you with some sort of

19 ev -- potential evidential value that you wanted

20 to protect it or preserve it?

21 A That's correct.

22 Q In Exhibit 173 -- I'll put that back up on the

23 ELMO -- you were describing the screwdriver in

24 the middle of this pit area; correct?

25 A Yes, sir.

1 Q And, actually, I -- I think I might have
2 misspoke. It's actually on the outer edge of the
3 pit area?

4 A Well, I believe the screwdriver was -- I consider the
5 pit the concave area, or that area that had that
6 six-foot rectangular area that was scooped out.

7 Q The screwdriver, did it -- was it burned?

8 A I believe it just had -- you can see soot on the
9 handle. Did not see any indication where it's burned
10 here.

11 Q Nothing on the, uh -- the metal portion?

12 A No.

13 Q Didn't have that same look, for instance, as the
14 spade of -- of -- of the shovel?

15 A No. This is, uh, the way it appears.

16 Q Okay.

17 ATTORNEY FREMGEN: Thank you, Your
18 Honor. I have nothing else.

19 THE COURT: Any redirect?

20 ATTORNEY FALLON: None.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome.

24 ATTORNEY FALLON: We have one last
25 witness.

1 THE COURT: All right.

2 ATTORNEY FALLON: State would call, um,
3 Don Simley to the stand.

4 THE COURT: Why don't you just remain
5 standing there and take the oath, please.

6 DONALD SIMLEY,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

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

11 THE WITNESS: My name is a Donald O.
12 Simley, S-i-m-l-e-y. It's the 2nd.

13 DIRECT EXAMINATION

14 BY ATTORNEY FALLON:

15 Q What do you do for a living?

16 A I'm a general dentist in Madison, Wisconsin.

17 Q And how long have you been employed in that
18 capacity?

19 A I graduated from Marquette University in 1976, and
20 have been there ever since.

21 Q Uh, what type of dentistry, um, do you practice?

22 A Uh, general dentistry is a family dentistry where I
23 take care of patients and their general oral health.
24 I also am a consultant in forensic dentistry.

25 Q All right. And, um, what is forensic dentistry?

1 A Forensic dentistry can, basically, be defined as the
2 application of the science of dentistry to the field
3 of law. I'm sorry. Slow down? The application of
4 science of dentistry to the field of law.

5 Uh, there are a number of different
6 areas that can be involved in forensic dentistry.
7 Uh, routine dental identifications are the most
8 commonly involved where individuals that are --
9 are not viewable or visually identifiable need to
10 be identified. Um, mass disaster involvement,
11 uh, just dental identifications taken to a -- a
12 higher number. Uh, child abuse cases. Uh, bite
13 mark evidence, uh, dental malpractice and
14 negligence in trauma of injury that are involved
15 in litigation.

16 Q All right. And how is it that you are involved
17 in this case, Doctor?

18 A Uh, received a phone call from, uh, Special Agent
19 Duranda Freymiller, on November 9 of 2005.

20 Q What were you asked to do?

21 A She asked me to assist in the identification of -- of
22 an individual that was recovered in Manitowoc County.

23 Q All right. And, um -- And why are you here
24 today?

25 A Uh, to render my opinion after analysis of the

1 remains and to give my opinion.

2 Q All right. Well, before we get to the opinion,
3 uh, and your findings in this case, um, if you
4 would tell us a little bit about yourself. First
5 of all, tell us, uh, where you received your
6 undergraduate degree?

7 A I graduated, uh, from Elmhurst College in 1960 --
8 '72, I'm sorry. Uh, received a B.S. Degree there.
9 And then in 1976 I graduated from Marquette
10 University, School of Dentistry.

11 Q And if you would tell us a little bit about, um,
12 your forensic dental experience? What are some
13 of the types of things that you did?

14 A Um, well, I've been in -- involved in forensic
15 dentistry since 1981. Um, most of the cases I -- I
16 do are -- are dental identification cases. Again,
17 bite mark evidence, um, child abuse cases. Uh, been
18 involved in 435 cases, approximately. Uh, that does
19 not include work where I was involved in the World
20 Trade Center and down in Katrina. Um --

21 Q We'll touch -- touch base with them in just a
22 moment.

23 A Okay.

24 Q Um, just so that we're clear, tell the jury what
25 a dental identification is? What does it mean?

1 A Dental identification is -- it's a means of positive
2 identification. If -- if an individual is, uh,
3 decomposed, or skeletonized, or burned beyond
4 recognition, uh, if there's been disfigurement to the
5 face, uh, where a visual identification is not
6 applicable, or fingerprint, uh, identification is not
7 available, uh, sometimes you resort to dental
8 identifications, which is usually easier, quicker,
9 cheaper than -- than DNA.

10 Q All right. And, um, have you been called upon,
11 um, to, uh, render expert opinion on dental
12 identification in the past?

13 A Yes, sir, I have.

14 Q Uh, any estimate as to approximately how many
15 times you've been asked to express an opinion?

16 A Meaning in-court testimony?

17 Q Regarding an -- a dental identification, yes.

18 A I've testified, I believe, 32 times. Most of those
19 were involved with dental identifications. Um,
20 probably three-quarters of them. The other ones were
21 in bite mark cases, and I think there's only one that
22 was involved in an injury case. Personal injury
23 case.

24 Q All right. Tell -- You mentioned something
25 about, uh, disaster response experience. You

1 mentioned something about the World Trade Center
2 and Katrina. How were you involved in those
3 types of responses?

4 A I'm a member of a -- a national disaster team. It's
5 part of what they call NDMS, or the National Disaster
6 Medical System, which currently operates underneath
7 the Health and Human Services. And it was under
8 Health and Human Services at September 11. And then
9 they restructured things. And then Katrina, they
10 were actually underneath, uh, Department of Homeland
11 Security and FEMA. And now we're back with Health
12 and Human Services.

13 And I've been involved with this NDMS,
14 and they have a DMORT team, and DMORT stands for
15 Disaster Mortuary Operational Response Team. And
16 I've been involved with the DMORT team for a
17 number of years, but I've only actually been
18 deployed or activated twice. And once was for
19 the World Trade Center and then once was for
20 Katrina.

21 Q And your role in those responses was what?

22 A Two assist and help in the identification of the
23 individuals.

24 Q All right. Are you familiar with, uh, a -- a
25 standing or a title called board certification?

1 A Yes, sir.

2 Q Tell us what that is?

3 A Um, to be board certified, uh, would indicate that
4 you have a -- I'd say a higher degree of experience,
5 or expertise, um, or training in the area of, in this
6 particular case, forensic dentistry.

7 Uh, it means taking a -- a -- an
8 examination. In my particular case, to be
9 qualified, you have to submit an application. I
10 believe the application that I submitted, uh, and
11 I was board certified in 1993, was -- consisted
12 of two, three-ring binders that were full of
13 documentation of, uh, cases that I've been
14 involved with, uh, court testimony, uh,
15 documentation of affiliations with certain
16 agencies, continuing education.

17 And then if you're deemed to be board
18 eligible to take the examination, the examination
19 is a -- it's a two-day written/oral examination
20 that you have to take to pass.

21 Q All right. And so I take it, then, from your
22 comments, you are a board certified forensic
23 dentist?

24 A Yes, sir.

25 Q All right. Uh, how many board certified forensic

1 dentists are there in Wisconsin, for instance?

2 A There are only two of us in Wisconsin.

3 Q All right. And in terms of, um, generally, in

4 North America, United States, and Canada, in

5 particular, do you have any idea approximately

6 how many board certified dentists there are?

7 A There are approximately a hundred board certified

8 forensic dentists in -- in North America.

9 Q Do you belong to any professional organizations?

10 Uh, you mentioned the National Disaster Medical

11 System. Are there any other organizations that

12 you, um, you are a member of that assist you in

13 your forensic work?

14 A Uh, there are a number of different organizations

15 that I -- I belong to. I'm not so sure that they

16 assist me, although you -- I shouldn't say that

17 either, because they -- they do assist me in the fact

18 that you gain, uh, continuing education and

19 additional learning experiences from these

20 organizations.

21 Uh, the American Society of Forensic

22 Odontology is kind of an entry level

23 organization, but it's one of the biggest

24 forensic organizations in the country and the

25 world.

1 The, um, American Academy of Forensic
2 Sciences, uh, is probably one of the premier
3 organizations in the United States.

4 Um, I'm also a member of the Wisconsin
5 Association for Identification. Uh, the
6 Wisconsin Coroners and Medical Examiners
7 Association.

8 Um, and then the board affiliation with
9 the American Board of Forensic Odontology. And
10 odontology is just a fancy name for dentistry.

11 Q All right. And, um, drawing your attention just
12 ver -- very briefly to Exhibit 182, um, do you
13 recognize Exhibit 182?

14 A Yes, sir, I do.

15 Q What is Exhibit 182?

16 A Uh, this is a copy of my CV, or curriculum vitae.

17 Q All right. And is that an accurate summary of
18 your educational and professional experience as
19 it relates to the field of forensic dentistry?

20 A Yes, sir, it is.

21 Q All right. Now, to this case. When was it that
22 you first became involved in the case, Doctor?

23 A That would have been on November 9 of 2005.

24 Q All right. And what were you asked to do?

25 A Well, Special Agent Freymiller had asked me to assist

1 in the identification, and then Assistant, uh,
2 District Attorney Jeff Froehlich, uh, had called and,
3 um, wanted to know, number one, I -- that I'd already
4 looked at some of the remains on that date, and
5 wanted to know if they were human or nonhuman, and
6 then he also wanted to know a little bit about my --
7 my background and -- and my qualifications.

8 Q All right. Uh, did it come to pass that you were
9 asked to examine, um, items to determine whether
10 or not they involved, uh, your field of forensic
11 dentistry?

12 A Yes, sir.

13 Q And approximately how many items were you asked
14 to examine and -- and attempt identification of?

15 A There were six times that I received evidence. A
16 total number of pieces of -- of potential evidence
17 were 52, uh, potential items of evidence.

18 Q All right. And tell us about those items? What
19 did they consist of?

20 A When I say potential, because, initially, it's --
21 it's -- it's difficult to identify, uh, some burned
22 and fragmented dental structures. Um, so potential,
23 meaning that some of the items that were recovered
24 were not dental structures, but it wasn't initially
25 known then, or they wanted to be verified.

1 Um, there were, I believe, 24, uh,
2 dental structures, root fragments, um, crown
3 fragments. There was not one whole tooth that I
4 was able to examine. There were three bone
5 fragments. There were 24 pieces of wood that,
6 again, looked like dental structures. And one
7 piece of plastic.

8 Q Is it at all unusual to have, for instance, a --
9 a piece of wood, um, mistaken for a tooth?

10 A No, sir. It's, uh, quite common. It's -- it's easy
11 for anybody else to misidentify them, or to exclude
12 them, or -- or not identify them as tooth structures.
13 In -- in fact, sometimes I can't even identify them
14 without taking x-rays of -- because they look totally
15 different radiographically or on the x-rays.

16 Q And is that, um, particularly more problematic
17 when they've been consumed in a fire?

18 A Yes, sir.

19 Q All right. Um, having said that, would you tell
20 us or describe for us the condition of -- of, uh,
21 these -- the 24 tooth fragments and the three
22 bone fragments that you examined?

23 A They were all burned. They were all charred. Uh,
24 they were very, very brittle. Um, again, they didn't
25 look like normal tooth like we would normally see,

1 and, essentially, the crowns were all gone. What we
2 were looking at was just the root structure, which
3 was, um, part of the tooth that's buried in the bone.

4 There was one portion of a crown, um,
5 but that portion of the crown was from a -- a
6 cuspid or an eyetooth and was not able to be
7 identified.

8 Q All right. In terms of the condition of these
9 fragments, how did they compare to other
10 fragments that you've been asked to examine in
11 attempt at identification of in the past?

12 A Since 1981, I've examined a number of -- of
13 individuals who've been burned, and, uh, these were
14 probably among the worst that I've examined.

15 Q Are you familiar with a phrase that some dentists
16 use called fracture matching?

17 A Yes, sir.

18 Q Um, what is fracture matching?

19 A When you fracture match something, you can put two
20 pieces back together. And if I can say that they
21 came from a common source, that they were at one time
22 one piece, you can fracture match them back together.

23 Q Did you attempt any fracture matching in this
24 case?

25 A Yes, sir, I did.

1 Q All right. Tell us about that?

2 A There were two root fragments that I was able to
3 fracture match back together. Actually, I should say
4 four. There were two that were very critical, but
5 there were two other ones that ended up being
6 academic.

7 Um, the two critical ones were -- were
8 root fragments from, uh, the lower right second
9 molar, which would be Tooth No. 31, which we call
10 it, and that particular tooth, the crown, again,
11 was -- was destroyed, but there were two roots
12 associated with that tooth, and they were
13 separate, but I could put those back together,
14 and I could see that they had initially come --
15 at one time been together. And then to fracture
16 match them, I put them back together and then I
17 applied a little cyanoacrylate, or Super Glue so
18 that they stick together.

19 Q All right. And is that a common approach?

20 A Yes, sir.

21 Q And what is the benefit of fracture matching?

22 A Well, there's a couple benefits, really. Number one,
23 if you've got 52 pieces of potential evidence, if you
24 can combine that down so that there's a little bit
25 less, that's a -- a small advantage, not a big one.

1 The big one is -- is that these pieces
2 of -- of dental remains are extremely brittle
3 when they're burned and they're charred. And
4 these pieces of -- of -- of dental structures
5 could be very easily crushed with finger
6 pressure. If they're dropped, they could be
7 broken. And if that happens, that pot --
8 potential piece of evidence is -- is lost. It's
9 gone forever.

10 So by Super Gluing them, and -- and
11 fracture matching, and putting them back
12 together, and reinforcing them with the
13 cyanoacrylate, you can preserve, you can protect,
14 and -- and maintain that evidence better.

15 Q All right. And, um, in this particular case, uh,
16 were you -- uh, did you attempt to make a
17 comparison?

18 A Yes, sir, I did.

19 Q All right. And that would assume, then, that you
20 had something to compare or standards to compare
21 the fracture matched tooth with something else?

22 A That's correct.

23 Q Um, and tell us, what did you have at your
24 disposal to assist in this comparison?

25 A Well, there were a number of different x-rays that I

1 had of -- of Teresa Halbach, and all the x-rays were
2 labeled with -- with Teresa's name. On November 10,
3 uh, Special Agent Jim Holmes brought to my office
4 dental records for Teresa.

5 And those records consisted of a panorex
6 x-ray from August 30 of 2001. Um, a panorex
7 x-ray is an x-ray that goes around the outside of
8 the mouth and picks up everything from ear to
9 ear. Uh, oral surgeons love them. A lot of
10 general dentists love them. Pediatric dentists
11 love them. Because it -- it picks up everything.

12 He also brought over 16 bitewing x-rays.
13 And a bitewing x-ray, as I'm sure you're familiar
14 with, is you go in to see your family dentist,
15 and they have you bite down on the film, and
16 shoot the x-ray in from the side, and it picks up
17 the most amount of tooth structure with the least
18 amount of x-rays. And, usually, you're looking
19 for decay. You can look at the bone support
20 there, too.

21 There were 16 bitewing x-rays varying in
22 ages from 1998 to 2004. At that particular time,
23 though, I knew that we needed -- additional
24 x-rays would be more beneficial. And what I was
25 looking for, specifically, is what they call a

1 periapical x-ray.

2 Q Uh, what was that again?

3 A A periapical x-ray.

4 Q Could you, uh, spell that for us? Um --

5 A P-e-r-i-a-p-i-c-a-l.

6 Q What -- what is that?

7 A A periapical x-ray, it -- it's just -- it's just like
8 the bitewing x-ray. The same size. But it's
9 positioned down lower on the tooth so it will pick up
10 one or two teeth in its entirety, and it will pick up
11 the whole root structure. Whereas, on a bitewing
12 x-ray, you're picking up top and bottom teeth, and
13 you kind of cut off the ends of the roots, uh,
14 because they're not designed to pick up the whole
15 root structure.

16 And I was looking -- Since we had the
17 entire root from this Tooth No. 31 that we were
18 looking at, um, I was looking for periapical
19 x-rays, of which Teresa's dentist did not have
20 any of these x-rays, but he said he did have some
21 additional x-rays from 1997. Um, it was
22 August 25 of 1997. And he said those x-rays were
23 positioned just a little bit lower and they
24 showed a little bit more root structure. So he
25 forwarded those to me so I had those to look at

1 also.

2 Q With the assistance of the 1997, um, x-ray, were
3 you able to make a comparison?

4 A Yes, sir, I was.

5 Q All right. And before we do that, um, just so
6 that we know, um, in dental circles, you number
7 your teeth, so --

8 A Yes.

9 Q -- tell -- tell us what Tooth No. 31 is?

10 A All the teeth have specific numbers. They have what
11 they call a universal numbering system. So if I talk
12 about Tooth No. 1, uh, any dentist in the country
13 will know that I'm talking about the upper right
14 third molar. The wisdom tooth.

15 If I'm talking about Teeth No. 8 and 9,
16 they'll know I'm talking about the two central
17 incisors right underneath the nose. The big
18 front teeth.

19 Uh, No. 19 is a lower left first molar,
20 and Tooth No. 31 is a lower right second
21 permanent molar.

22 Q All right.

23 A So just a -- a way of -- for us to more easily, um,
24 identify a particular tooth by number.

25 Q All right. I'm going to have, um, an exhibit

1 marked and shown to you. I'm having Agent, uh,
2 Fassbender show you Exhibit 162. If you'd take a
3 moment to examine it? Do you recognize Exhibit
4 162?

5 A Yes, sir, I do.

6 Q And what is Exhibit 162?

7 A These are the remains that I received on, uh,
8 November 11, 2005 from Special Agent Jim Holmes.

9 Q All right. And, um, what remains are depicted in
10 Exhibit 162?

11 A There were two bone fragments. Um, one of what they
12 call the coronoid process, which is just an upper
13 part of the lower jaw, which was academic in
14 recovery. There was another, uh, bone fragment,
15 which was from the lower right mandible, or lower
16 jaw. And then there were three root fragments.

17 Q All right. Now, is exhibit -- Excuse me. Does
18 Exhibit, um, 162, uh, contain these -- this Tooth
19 No. 31 that you used in your comparison?

20 A Yes, sir, it does.

21 Q All right. All right. Um, I believe that, um,
22 we have prepared a, um, PowerPoint presentation
23 to assist in, um, your explanation of your
24 findings; is that correct?

25 A That's correct.

1 Q All right. And would the use of the PowerPoint
2 assist you in further, um, demonstrating what
3 your findings were?

4 A I think it would be beneficial for the jurors,
5 please.

6 Q All right. While we're working on, um, getting
7 that up and running, um, explain why you were
8 able to do a comparison involving Tooth No. 31?

9 A Well, Tooth No. 31 was really the one that was best
10 preserved. It had the most physical evidence that
11 was there with the two root structures. Uh, again,
12 there were no crowns that were remaining. Uh,
13 fillings that Teresa had in her teeth were gone. Uh,
14 they were destroyed in the fire. Uh, all the crown
15 structure that was easily identifiable was gone.

16 Uh, some of the root fragments that were
17 recovered, uh, of those 24 initial root
18 fragments -- I mean, there were some that I
19 couldn't identify. I mean, they were burned
20 badly enough, and they had just por -- portions
21 of roots that, um -- I mean, I tried to identify
22 each tooth as to, you know, if it was a molar, or
23 bicuspid, a cuspid, an incisor, or what type of
24 tooth it was, and there were some that I couldn't
25 identify. Uh, so that was the best physical

1 piece of evidence that we had for examination.

2 And, also, then, you have an, uh -- a
3 dental record from Teresa, um, that you can
4 compare. So you need decent postmortem evidence
5 and you need decent, uh, antemortem evidence,
6 also.

7 Q All right. I'm going to have some photographs
8 presented to you in -- in conjunction with, um,
9 PowerPoint. What is, um -- First of all, um, you
10 have a photograph there, which was, uh, depicted
11 in the photograph? The top one?

12 A This top one is, um, what's on the screen. You want
13 the number you mean?

14 Q Yes, please. The exhibit number?

15 A Exhibit No. 176.

16 Q Very good. And that is what is depicted on the
17 screen?

18 A Yes, sir.

19 Q All right. What does, uh, Tooth No. 31, buccal,
20 b-u-c-c-a-l, what -- what does that signify?

21 A Buccal means cheek side. So, uh, there are actually
22 five aspects to a tooth that we can examine. And the
23 buccal aspect is the cheek side. The lingual, which
24 we'll see in a second, is the tongue side. The
25 occlusal portion is the top of the tooth. And then

1 two additional sides would be the mesial, towards the
2 front of the mouth, and distal, towards the back of
3 the mouth.

4 So this just happens to depict the --
5 the buccal aspect. And what we're looking at
6 is -- If you compare this grainy aspect here,
7 that surface is very rough, um, and usually the
8 cheek side aspect of a dental fragment is usually
9 going to be burned more than the tongue side
10 aspect, because on the tongue side aspect, the
11 tongue actually pushes up against the tooth and
12 the jaw fragment to -- to further preserve and
13 protect that particular fragment.

14 Whereas, once the cheek gets burned
15 through, uh, the outside or the cheek side aspect
16 of that tooth is going to take a bigger hit in
17 there. Um --

18 Q How much of that is the actual tooth, itself,
19 which is depicted, if you could help us out?

20 A Right -- This is the back root, and this is the front
21 root. This would have been the socket where the
22 first molar, Tooth No. 30, would have been, and this
23 is a socket where the second bicuspid would have
24 been.

25 So we're actually seeing a section from

1 the second bicuspid back to -- And this is
2 actually where a wisdom tooth might have been if
3 one had been present.

4 Q All right. And, um, what is the next, um, um,
5 photograph you have there?

6 A The next photograph is not here.

7 Q All right. All right. And, um, what is
8 depicted, then, on the --

9 A This --

10 Q -- um, PowerPoint?

11 A This PowerPoint -- This shows the lingual aspect, or
12 the tongue side aspect. And, again, you can see --
13 you compare that surface of the bone compared to the
14 cheek side aspect, it's very smooth. It was
15 protected. It was -- it was further insulated in
16 there. And this is just a portion of Tooth No. 31.
17 Uh, that's all that was left of the crown portion of
18 the tooth.

19 Q All right. Next one? And, uh, what are we
20 looking at here on the -- the photograph? This
21 should be Exhibit 177, I believe?

22 A That's correct, 177. Uh, this is from the occlusal
23 or from the biting surface. And this just shows the
24 top of the tooth. And the way it was fractured
25 matched, that fracture was down -- looks like it

1 comes across here and comes up here. So this root
2 and this root were two separate entities, uh, when I
3 received them, and then I fracture matched them back
4 together.

5 Q All right. So are you telling us that what we're
6 looking at here is actually the root and not so
7 much -- the -- the top of the root and not really
8 the crown or the top that -- the part where we
9 chew with?

10 A Correct. That part that you chew with, the part
11 that's normally above the gum, is -- is, for all
12 practical purposes, 99.9 percent gone.

13 Q All right. All right. And what is, uh, depicted
14 here now?

15 A Uh, this is Exhibit 178.

16 Q All right.

17 A Uh, this was the panorex x-ray from 2001, uh, that I
18 received from Special Agent Jim Holmes. Again, the
19 panorex x-ray goes around the outside of the mouth,
20 picks up everything from ear to ear. Um, so it shows
21 all of the teeth, and it shows the wisdom teeth that
22 Teresa had at this particular time. The tooth that
23 we're looking at is on the lower right second molar,
24 and that's Tooth No. 31.

25 Q What are we looking at here?

1 A Uh, this would be Exhibit 179. And this is just a
2 cropped picture of that panorex. So it's just --
3 That area that we're looking at on Tooth No. 31 kind
4 of zoomed in on that particular tooth.

5 Q Okay.

6 A That is Tooth No. 31. I had other fragments in there
7 at one time, uh, trying to see if that particular
8 fragment was part of Tooth No. 30, and that it was
9 not. Um, so what we're looking at, again, this is
10 the postmort x-ray of the fragment of Tooth No. 31.

11 Q All right.

12 A And then this is just a cropped picture of Tooth No.
13 31, and that is -- looks like Exhibit 180.

14 Q All right. And what does, um, postmortem x-ray
15 mean?

16 A Postmortem is just after death.

17 Q All right. And so is that the -- is that an
18 x-ray of what you previously showed?

19 A Correct. The initial photographs, uh, of -- of Tooth
20 No. 31 with the buccal, lingual and occlusal views.
21 Uh, that's an x-ray of that fragment, yes.

22 Q So that's that tooth there. Now, is that, um,
23 x-ray taken after it's fracture matched?

24 A Correct.

25 Q Okay. All right. And what are we looking at

1 here? We have a split screen; panorex and
2 postmortem?

3 A This is Exhibit 181. And this is just a side-by-side
4 comparison of the panorex at the cropped Tooth No.
5 31, and then the postmortem Tooth No. 31. And just
6 some of the things I'm looking at is the distance
7 between the roots. The whiter area up here that
8 we're looking at is the enamel. That's the crown of
9 the tooth. From here over is the crown of the tooth.
10 And that part has been destroyed.

11 The little grayer shade on the inside is
12 the dentin. That's the inside part of the tooth.
13 Um, enamel is the hardest structure in the body.
14 Dentin is the second hardest structure in the
15 body. Uh, they're both harder than bone.

16 The dark line in the middle of the tooth
17 is the pulp. That's the blood vessel near the
18 middle of the tooth.

19 So what I'm looking at, I'm comparing
20 the pulp tissues in the middle of the tooth,
21 antemortem and postmortem. There's a little
22 curvature in the root on the postmortem x-ray
23 that I can see on the antemortem x-ray.

24 So that's just a side-by-side
25 comparison.

1 Q All right. All right, Doctor, let me ask you,
2 then, for, um, your opinion. Um, based on your
3 analysis of Tooth No. 31, the one that you were
4 able to fracture match back together, do you have
5 an opinion on whether the root and bone fragments
6 from Tooth 31 recovered, uh, from the burn pit,
7 are consistent with the dental x-rays of Teresa
8 Halbach that you obtained from Dr. Krupka?

9 A Yes, I do.

10 Q And what is that opinion?

11 A In my opinion, they were very consistent. And that I
12 could place -- actually place the antemortem x-ray on
13 top of the postmortem x-ray on the panorex, and then,
14 also, on the '97 bitewing x-rays, and they would
15 appear as one. I mean, I could superimpose one on
16 top of the other.

17 And the -- the pulp tissue, the root
18 structure, uh, would coincide perfectly in there.
19 So they were very consistent.

20 Q Now -- now, in your terms of forensic dentistry,
21 what does very consistent mean?

22 A To me, very consistent means that it's a probable
23 identification. Um, positive identification -- I --
24 I was a little leary of -- of that term, because of
25 the fact that I only, essentially, had one fragment

1 to really work with. Um, but I also am very
2 conservative in my opinion. Um, if I say positive
3 identification, to me that means to the exclusion of
4 all others. And, um --

5 Q Does that mean a hundred percent in your mind?

6 A A hundred percent in my mind. Yes. And --

7 Q So --

8 A -- this is -- looked like it was very, very close.

9 Q All right. That was my question. How close
10 are -- were you to making a positive
11 identification here?

12 A I was very close. I mean, it was right there, and --
13 and probably the only thing holding me back is that
14 I'm, again, ultra-conservative in my opinion.

15 Q All right.

16 ATTORNEY FALLON: I have no further
17 questions for the witness and would move into
18 evidence the, uh, photographs which, uh,
19 Dr. Simley has identified. Um, Exhibits, uh --
20 Plus Exhibit 162, which was the tooth fragment
21 that he fractured matched. And that would be
22 Exhibit 162, 176, 177, 178, 179, 180, 181, and,
23 for completion of the record, Exhibit 182, the
24 CV.

25 THE COURT: Any objection, Counsel?

1 ATTORNEY FREMGEN: No, Judge.

2 THE COURT: They're received.

3 Cross-examination.

4 ATTORNEY FREMGEN: No, Judge.

5 THE COURT: All right. You may step down.

6 THE WITNESS: Thank you.

7 THE COURT: Any further witnesses?

8 ATTORNEY FALLON: I think that concludes
9 our witnesses for this afternoon.

10 THE COURT: For this afternoon?

11 ATTORNEY FREMGEN: Judge, for the -- for
12 the record, I would move in Exhibit 175. I
13 believe that was the one I introduced with, uh,
14 Agent Sturdivant. I believe it was a picture of
15 a -- a larger, wider angle picture of the burn --

16 THE COURT: Photo of the burn pit.

17 ATTORNEY FREMGEN: -- pit. Right.

18 ATTORNEY FALLON: We have no objection.

19 THE COURT: All right.

20 ATTORNEY FALLON: We would join in that
21 request.

22 THE COURT: All right. That's -- that's
23 received as well. All right. We are then adjourned
24 until tomorrow at, uh, 8:30.

25 ATTORNEY FALLON: Very well.

1 THE COURT: Ladies and gentlemen, the usual
2 admonition. Don't talk about the case to anyone,
3 not even among yourselves. Okay.
4 (Wherein court stands adjourned at 4:07 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

19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
22
23
24
25

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.22 caliber [2] 111/8 157/16	171 [3] 190/23 192/14 192/15	435 [1] 209/18
.30 [1] 157/17	172 [4] 3/21 3/22 195/25 196/2	45 [2] 81/14 81/16
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL DAY 4

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 19, 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 8:38 a.m.)

2 THE COURT: This is the case of State of
3 Wisconsin vs. Brendan Dassey. It's 06 CF 88.
4 Appearances, please.

5 ATTORNEY FALLON: Morning, Your Honor.
6 May it please the Court, the State continues in
7 its appearance by Special Prosecutors Ken Kratz,
8 Tom Fallon, and Norm Gahn.

9 ATTORNEY FREMGEN: Attorney Mark Fremgen
10 appears with Attorney Ray Edelstein and Brendan
11 Dassey.

12 THE COURT: Morning, Counsel, morning
13 jurors. Uh, members of the jury, if you recall
14 at the beginning of this case, I gave you some
15 preliminary instructions. One of them concerned
16 evidence. It was evidence defined, and then it
17 said, evidence is, and it -- it gave you three
18 different kinds of evidence.

19 Uh, the third of that tripartite was
20 something, uh, called a stipulation. Third,
21 evidence is any facts to which the lawyers have
22 agreed or stipulated.

23 Uh, there also is going to be an
24 instruction later on that, uh, will tell you that
25 the district attorney or, in this case, the

1 special prosecutor and the defense attorney have
2 stipulated or agreed to certain facts. And those
3 facts, uh, would be, as stated, if the particular
4 witness had been called, he or she would have
5 testified as follows.

6 I'm going to read to you now three
7 agreements or stipulations that the parties have
8 agreed to. These are called trial stipulations.
9 The first is as follows:

10 Steven Schmitz is a citizen living in
11 New Holstein, Wisconsin, a community
12 approximately 30 miles west of Manitowoc, uh,
13 Wisconsin.

14 JoEllen Zipperer is a citizen living in
15 rural Manitowoc County, Wisconsin.

16 That if called to testify, Steven
17 Schmitz would testify that on October 31, 2005,
18 Teresa Halbach came to the Schmitz property to
19 take a photo of a vehicle for *AutoTrader*
20 *Magazine*.

21 Schmitz would indicate that Halbach was
22 at his residence at approximately 1:30 p.m. Was
23 there for approximately ten minutes. Was wearing
24 a white shirt, waist -- waist-length jacket, and
25 blue jeans.

1 Schmitz would state that before leaving,
2 Halbach provided Schmitz with the latest
3 *AutoTrader Magazine* and a bill of sale. Left his
4 property and drove away in her SUV.

5 That if called to tref -- testify,
6 JoEllen Zipperer would testify that on October
7 31, 2005, Teresa Halbach came to the Zipperer
8 property to take a photo of a vehicle for
9 *AutoTrader Magazine*.

10 Zipperer would indicate that Halbach was
11 at her residence between approximately 2 to
12 2:30 p.m. Was there for approximately ten
13 minutes. Was wearing a white top, waist-length
14 jacket, and blue jeans.

15 Zipperer would state that before
16 leaving, Halbach provided her with the latest
17 *AutoTrader-Magazine* and a bill of sale. Left her
18 property and drove away in her SUV.

19 Zipperer would finally state that Avery
20 Salvage Yard is no more than a ten-minute drive
21 from her residence in Manitowoc County.

22 That's the first stipulation. Uh,
23 Counsel?

24 ATTORNEY KRATZ: Yes. And will that be
25 marked as an Exhibit; Judge?

1 THE COURT: I'm going to have it marked as
2 an exhibit. Now, I just want to have you affirm for
3 the record that this is your stipulation?

4 ATTORNEY KRATZ: That is, Judge.

5 THE COURT: Likewise, defense?

6 ATTORNEY FREMGEN: Yes, Judge.

7 THE COURT: Uh, this will be marked as an
8 exhibit, and we'll get to the exhibit -- Well, we --
9 I guess we'll get to the exhibit number now.

10 (Exhibit No. 196 marked for identification.)

11 THE CLERK: One ninety-six.

12 ATTORNEY KRATZ: One ninety-six? Thank
13 you.

14 THE COURT: The second trial stipulation is
15 as follows:

16 Number one. On October 31, 2005, Bobby
17 Dassey was the son of Barb Janda and brother of
18 the defendant, Brendan Dassey. Bobby Dassey
19 lived in the same residence with Barb Janda and
20 Brendan Dassey at the time.

21 Number two. That if called to testify,
22 Bobby Dassey would state that between 2:30 and
23 2:45 p.m. on October 31, 2005, he was inside the
24 Janda/Dassey residence where he observed a blue,
25 slash, green Toyota RAV 4 stop outside the

1 residence in close proximity to a maroon van that
2 his mother, Barb Janda, had for sale.

3 Bobby Dassey would state that he
4 observed a young woman, that he later came to
5 identify as Teresa Halbach, exit her vehicle,
6 take some photos of the maroon van, and walk
7 toward the trailer of Steven Avery.

8 Bobby Dassey would further state that,
9 after taking a shower, he left the residence at
10 approximately 3:00 p.m. to go deer hunting, at
11 which time he still observed the RAV 4 parked
12 outside his residence, but that Teresa Halbach
13 was not observed.

14 Bobby Dassey would state that he
15 returned to the residence at approximately
16 5:00 p.m., and he no longer observed the RAV 4.

17 That completes the second of the
18 stipulations.

19 Uh, Counsel -- and here I'm directing my
20 question to the special prosecutor -- is that
21 your stipulation?

22 ATTORNEY KRATZ: It is, Judge.

23 THE COURT: And counsel for the defense,
24 is that your stipulation?

25 ATTORNEY FREMGEN: That's correct.

1 THE COURT: It will be marked as Exhibit...
2 (Exhibit No. 197 marked for identification.)

3 THE CLERK: One ninety-seven.

4 THE COURT: The third stipulation is as
5 follows:

6 Number one. On October 31, 2005, Scott
7 Tadych was the boyfriend of Barb Janda. Knew the
8 defendant, Brendan Dassey, Steve Avery, and other
9 family members living at the Avery salvage
10 property.

11 Number two. That if called to testify,
12 Scott Tadych would testify that between 7:30 and
13 7:45 p.m. on October 31, 2005, he was at the
14 Janda, slash, Dassey property where he dropped
15 off Barb Janda.

16 Tadych would testify that he observed a
17 large fire in the burn area behind the detached
18 garage of Steven Avery.

19 Tadych would further indicate that, at
20 the time, he observed Brendan Dassey and Steven
21 Avery standing next to the fire.

22 To the State, is that your stipulation?

23 ATTORNEY KRATZ: It is, Judge.

24 THE COURT: The defense, is this your
25 stipulation?

1 ATTORNEY FREMGEN: Yes, Judge.

2 THE COURT: It will be marked as Exhibit...

3 (Exhibit No. 198 marked for identification.)

4 THE CLERK: One ninety-eight.

5 THE COURT: Uh, ladies and gentlemen, there
6 will be -- or -- additional stipulations, but not at
7 this time.

8 ATTORNEY KRATZ: Thank you.

9 THE COURT: You may proceed.

10 ATTORNEY FALLON: State would call
11 Mr. Rod Pevytoe to the stand.

12 **RODNEY PEVYTOE,**

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

15 THE CLERK: Please be seated.

16 THE WITNESS: Thank you.

17 THE CLERK: Please state your name and
18 spell your last name for the record.

19 THE WITNESS: My name is Rodney Pevytoe,
20 P-e-v-y-t-o-e.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY FALLON:

23 Q What do you do for a living?

24 A I'm a special agent with the Wisconsin Department of
25 Justice in the Division of Criminal Investigation. I

1 work in the Arson Bureau of that unit.

2 Q How long have you been in the employ of the

3 Department of Justice, Division of Criminal

4 Investigation?

5 A I've been with, uh, that agency for 27 years.

6 Twenty-five years have been in the Arson Bureau.

7 Q Prior to joining the Department of Justice, did

8 you have any other law enforcement experience?

9 A Yes. I was a reserve deputy sheriff in Marathon

10 County. It's near Wausau, Wisconsin.

11 Q What kinds of cases does the Arson Bureau involve

12 themselves with?

13 A Well, generally speaking, we investigate fires and

14 explosions, uh, that occur here in the state of

15 Wisconsin. We'll investigate the cause. If it's

16 determined to be of accidental origin, we do, uh,

17 some reporting, and then, basically, end our

18 involvement.

19 If it's determined that there's some

20 criminal activity, we, uh, work with local law

21 enforcement and further the criminal

22 investigation into that matter.

23 Q All right. Um, Agent, would you pull that

24 microphone a little bit closer to you?

25 A Sure.

1 Q Um, how do you, typically, get involved in a
2 case?

3 A Typically, an -- an Arson Bureau agent receives a
4 request, and it's generally either from a law
5 enforcement agency or sometimes from a fire
6 department, stating that they need some expertise in
7 determining the cause of a fire or an explosion, then
8 we go from there.

9 Q All right. And on approximately how many fire
10 investigations have you been involved in in your
11 tenure with the Arson Bureau?

12 A Uh, unfortunately, I don't have an exact number. Uh,
13 I could easily say it's between eight hundred and a
14 thousand. It's probably more than that but, it seems
15 like a whole lot.

16 Q And, um, of those investigations, have you ever
17 involved yourself in an investigation in which
18 there was a fatality associated with the, uh,
19 fire?

20 A Yes, sadly, many times I do get involved in a fatal
21 fire investigation.

22 Q All right. And approximately how many fatal fire
23 investigations have you involved yourself in
24 through the years?

25 A Again, I can't give you an exact number, but, um, an

1 estimate would be in -- in excess of a hundred. Some
2 of those would involve multiple fatalities, four,
3 five people dying at a time.

4 Q All right. Um, tell us a little bit about your
5 educational and training experience if you will?
6 Uh, do you hold any, uh, degrees?

7 A Yes. I have a Bachelor's Degree in criminal justice
8 from the University of Wisconsin. Uh, in addition to
9 that, I'm a certified police officer, certified
10 firefighter. I'm also a certified in -- fire
11 investigator by the International Association of
12 Arson Investigators.

13 Um, as part of my duties within the
14 Department of Justice, I've been able to receive
15 some additional training from a lot of different
16 agencies, to include the National Fire Academy,
17 the Bureau of Alcohol, Tobacco, Firearms and
18 Explosives, the FBI. Uh, numerous, uh, IAAI,
19 which means International Association of Arson
20 Investigators, uh, conferences, as well as
21 different private entities who have put on
22 various types of educational opportunities for
23 fire investigators.

24 Q If you could elaborate for us, what is the
25 International Association of Arson Investigators?

1 A The IAAI, International Association of Arson
2 Investigators, is an organization of people who are
3 devoted to the field of fire investigation, and it's
4 a worldwide association.

5 Uh, we have members in that association
6 from, uh, Europe, uh, Asia, uh, South America,
7 uh, the Middle East, as well as all of North
8 America. There's about 7 to 8,000 people that
9 are in that association um, at the present time.

10 Q All right. And, um, approximately how many
11 certified investigators are there? Do you know?

12 A Uh, certified fire investigators by the IAAI, there's
13 roughly a thousand of them right now.

14 Q All right. And is that in the world? The
15 country? North America?

16 A That's a thousand of them in the world.

17 Q In your, um, experience, um, have you been called
18 upon to instruct others in the -- in the field
19 of, um, uh, fire investigation?

20 A Yes. I, um, teach quite frequently in, um, a lot of
21 different areas. Um, I teach frequently for the
22 National Fire Academy as a member of their adjunct
23 faculty. Uh, as part of that, I travel throughout,
24 uh, most of the states, it seems, at one time or
25 another, as well as being, um, a guest speaker for

1 IAAI functions, and I teach fire-related subjects,
2 fire death investigation, uh, different subjects
3 related to our field.

4 Q All right. And are -- do you sit or are you
5 associated with any, um, boards which are
6 involved in either the training or the
7 investigation of fire scenes?

8 A Uh, yes, I am. I'm -- I'm on the board of directors
9 for the International Association of Arson
10 Investigators. Um, in addition to that, I also, um,
11 am the co-chair of the Certified Fire Investigator,
12 um, Committee as part of that. And so I've worked
13 with, uh, other people in our field in order to, uh,
14 gain the accreditation of being a CFI, a Certified
15 Fire Investigator.

16 Q All right. Um, as a result of your training and
17 your experience, um, are you capable of
18 recognizing human remains that have been damaged
19 by fire?

20 A Yes. I've seen them many times, and, uh, over the
21 course of many years that I've been doing those
22 investigations have, uh, gained that skill.

23 Q Now, uh, Mr. Pevytoe, directing your attention,
24 specifically, to this case, how did you become
25 involved?

1 A On November 9, that was a Wednesday, I was on a
2 different work assignment. I received a telephone
3 call from our Madison office, and they were directing
4 me to come down to Manitowoc to assist other
5 investigations in the ongoing investigation into this
6 incident.

7 Q And when did you arrive on the scene?

8 A Approximately mid-afternoon on the 9th.

9 Q Upon your arrival, what did you do?

10 A Uh, well, the first thing we had to do is we have a
11 security checkpoint. So I went through that. After
12 clearing security, I went down to the command area,
13 if you will, and I spoke to the two lead
14 investigators, uh, Special Agent Fassbender and
15 Detective Wiegert.

16 Q At some point was your attention directed to what
17 has now been referred to as a burn pit on the
18 salvage yard property?

19 A Yes. I was informed of that on the 9th, and actually
20 observed the area, but did no investigation at that
21 time. My actions on the 9th were, really, just
22 trying to assess what was there and what needs I
23 might do in order to further the investigation.

24 Q All right. And, um, describe the scene for us on
25 that, uh, Wednesday afternoon when you just,

1 generally, looked around?

2 A Uh, with respect to the burn pit area?

3 Q Yes.

4 A Uh, this burn pit is kind of a -- a large, sandy
5 plateau, um, and in there -- there's a depression in
6 there that had some charred remains. It was covered
7 with a tarp, uh, to protect it from the elements as
8 best as it could be done, and, um, it had covered an
9 area, oh, I don't know, um, maybe two-thirds the size
10 of this room. It seemed like the whole sandy area.
11 Maybe a little bit smaller than that. But the, uh,
12 burn pit, or the depression, was maybe five-by-six
13 foot. Something of that rough approximation.

14 Q Okay. After making this visual observation, um,
15 what was the first step in your investigation?

16 A Uh, the first thing I did was the following day, uh,
17 that was the 10th, and what I actually started out
18 the day doing is going over to the Sheriff's
19 Department in Chilton at Calumet County, and I did a
20 preliminary examination of some debris that had been
21 removed from the burn pit by other investigators
22 before me.

23 Q All right. Tell us about, uh, your, um, review
24 of, uh, the material?

25 A Well, I had an opportunity to take that debris and

1 put it under some high intensity lighting so it could
2 be inspected, uh, well, and then, uh, piece by piece
3 started to go through that and identify the different
4 items that I suspected would be of evidentiary value.
5 Um, and then I turned them over to the evidence
6 custodian, who was with me, uh, in order to maintain
7 the custody of those items.

8 Q Who assisted (phonetic) you in this, uh --
9 assisted you in this examination?

10 A Um, Special Agent Tom Sturdivant was with me and, uh,
11 Deputy, uh, Riemer, from the Sheriff's Department,
12 was the evidence custodian. He was not doing the
13 inspection, but he was there to receive the evidence.

14 Q All right. And tell us, uh, what items, if any,
15 did you find that, um, you thought were of some
16 evidentiary significance?

17 A Uh, during that pro -- uh, process, I recovered, uh,
18 some small fragments that I believed to be consistent
19 with bone. Uh, there was, uh, some fragments that I
20 suspected were some dental remains, and, in addition
21 to that, there were two small masses of, um, a
22 charred material that, uh, upon closer examination, I
23 felt that it was consistent with charred muscle, um,
24 like I've seen on, uh, burned fire victims. And I
25 recovered those items and turned those over for

1 evidentiary value.

2 Q Describe the -- the -- the pieces, or pieces that

3 you, uh, suspected to be bone and tissue, can you

4 tell us a little bit more about them?

5 A Um --

6 Q Their condition and their -- how they looked to

7 you?

8 A Sure. Uh, the two pieces of tissue material, um,

9 they were both relatively small. I -- I would

10 estimate between the size of a golf ball and maybe a

11 racket ball, just in -- in general size. They

12 weren't certainly round in shape, they were kind of

13 an unusual shape. But, uh, they were heavily charred

14 and blackened. Uh, you could see that they had some,

15 uh, cushioning. You could -- When you squeezed them,

16 they had some give to them, uh, and one of them had a

17 length of, uh, what appeared to be bone, uh, going

18 through it.

19 Q All right. And, uh, to whom did you provide that

20 material?

21 A I handed it directly to, uh, Def -- Deputy Riemer, or

22 Riemer, excuse me.

23 Q All right. Um, approximately how much time did

24 you and, um, Agent Sturdivant spend, uh, sifting

25 through this initial, um, harvest from the pit?

1 A I would estimate it was about half the day, because
2 it was close to the noon hour that we ended that
3 preliminary examination, decided to come back to the
4 scene.

5 Q Uh, and when you went back to the scene, where,
6 specifically, uh, did you go?

7 A To the -- to the Avery property. And then, in
8 particular, I went back to the burn pit area.

9 Q All right.

10 A And, uh, was going to do a reexamination of that
11 area.

12 Q All right. Who, if anyone, assisted you on the
13 reexamination of the area at that time?

14 A Uh, I had a couple different people. Um, we
15 established a couple different areas to be searched
16 around the burn pit. There were some, uh, evidence
17 technicians from the Manitowoc Police Department
18 there, and the grassy area that was around the burn
19 pit, um, just to make sure that there was nothing
20 that could be missed in there, we had them search
21 that entire area.

22 Then on the -- the pit, itself, of the
23 sandy mound, I had two additional special agents
24 that were helping me, a depu -- or, excuse me,
25 Special Agent Sielehr and Special Agent Rindt,

1 were both Arson Bureau agents with me.

2 Q All right. And, um, for the benefit of our

3 reporter there, could you spell Sielehr?

4 A I -- I can try. I think it's S-i-e-h-e-l-e-r.

5 Q All right. Um, approximately how much time did

6 you spend working on the pit on that area that

7 day?

8 A We spent several hours, because we had started in the

9 daylight, and I recall the fact that, uh, I requested

10 some generators and some high intensity lighting to

11 be brought in. Uh, once we started that process, I

12 didn't want to end it, so I think we went 'til close

13 to 10:00 at night, if my memory serves me right.

14 Q Uh, and did you then conclude?

15 A Yes.

16 Q All right. Now, I'd like to ask you a little bit

17 about your observations of the -- the soil, the

18 sod, and the ash that you, um, observed while you

19 were processing the pit. Um, first, tell us

20 about, um, the ash. Was there anything unusual

21 about the ash in this burn pit?

22 A Well, to a fire investigator, no ash is unusual, but

23 they may have characteristics, is probably the best

24 way to say it. Um, when I looked at the -- the loose

25 ash that was in the bottom of the pit, and there

1 still was some there, as well as the -- the bottom
2 layer of the burn pit, formed almost -- it looked
3 like just -- if you could imagine what blacktop
4 looked like, it was the soil that had bonded with
5 different, uh, distillance. Um, there was an odor
6 and a consistency there that I had seen before, and
7 that was from the burning of tires. Automobile tires
8 and such.

9 Q All right. What -- what do you mean by
10 distillant?

11 A Well, distillance would be -- When you burn a tire,
12 actually, some liquids come off and they begin to
13 flow, and they can bond in the soil. Uh, different
14 oils of petroleums will flow. When you take a solid
15 and you burn it, it actually has to be converted to a
16 vapor, so it will go through a very temporary liquid
17 stage. Sometimes that runs off.

18 Q All right. And so are you describing something
19 like a crust-like?

20 A Yes. That would be a very good characterization of
21 it.

22 Q In terms of, um, your examination of the pit,
23 what else, um, struck you of evidentiary
24 significance, uh, about, uh, the material that
25 was taken from the pit? And I'm now asking you

1 to focus on nonbiological?

2 A Well, we saw some metal items there.

3 Q All right.

4 A In particular, to describe a couple of them, uh, the
5 first thing that drew my attention, was there was a
6 mass or a ball, uh, that was about the size of a
7 tire, so 15-inches, of heavily oxidized wire. And,
8 uh, there were a multitude of wires there. And based
9 on my experience, what I've seen, is these wires are
10 consistent with what's left when you burn
11 steel-belted radial tires. Um, when you see -- It
12 shows up in this exhibit here.

13 Q Right. This is, uh -- Right now we're depicting,
14 uh, Exhibit 169. Does this help illustrate the
15 point?

16 A Yes, very well. Uh, you can see the mass of wire or
17 this ball of entwined wire there, uh, that's present.

18 Q Agent, there is a, um -- There it is. Right
19 there. And you can probably -- it's easier --
20 might be easier to -- if you would use that
21 screen --

22 A Oh, I'm sorry. Thank you. Um, right in that area is
23 the mass of wire. And that type of wire that's
24 heavily oxidized is what you see when you burn
25 steel-belted radial tires. That's what remains

1 there. And there's a -- a significant amount of wire
2 there. So we had a multitude of tires, steel-belted
3 radial tires, that were burned, and that would be
4 remaining.

5 In addition to that, I should also point
6 out, that in the pit, itself, and in the remains
7 of the ash, there were broken pieces of wire. So
8 that's -- What you see there is not
9 representative of all the steel-belting that we
10 saw at the scene, but that is the majority of it.

11 Q All right. Um, now, that mass of wire that
12 you've identified, was there anything else, um,
13 of significance about that mass of wire?

14 A Uh, yes. Um, as part of the scene examination, I
15 wanted to look at everything, and I started looking
16 at this entwined mass of wire. And I noticed that
17 inside the wire, deeply inside of it in some cases,
18 were some white fragments that I looked at closer,
19 and identified those to be bone material. And they
20 were entwined in there to the point where I actually
21 had to, physically, pull apart the wire in order to
22 get it there. It wasn't just on the surface. It was
23 actually down entwined into the wires.

24 Q Any, um -- Give me a second. Ah, yes. Now,
25 also, um, what is depicted in, uh, Exhibit, um,

1 169, is a, um, car seat, which we've, um,
2 previously identified and introduced as Exhibit
3 174. Did you have an opportunity to examine,
4 more closely, uh, the car seat which is depicted
5 in Exhibit 169, and which has now been marked as
6 Exhibit 174?

7 A Yes. As you can see, it's in the center of that, uh,
8 exhibit right there. It's the, um, rusted mass as
9 pointed out right there. Um, I don't know if it's a
10 car seat or from an SUV type of vehicle, but it's --
11 it's a vehicle seat. I -- I interpreted it to be a
12 rear seat that may have been removed, or an extra
13 seat, uh, but I did have an opportunity to examine
14 it.

15 I didn't see any bone fragments entwined
16 in that, but that's a pretty open area. It's not
17 as dense as the wire, um, but as I looked at it,
18 you could see it was heavily oxidized, it
19 appeared to have some charred material on it, and
20 it was my impression that it had been burned and
21 destroyed in the fire.

22 Q All right. And what is it about the condition of
23 the, uh, car seat that led you to conclude that
24 it had been burned or exposed to fire?

25 A Well, there were several things. First of all, its

1 location next to a burn pit might be suggestive of
2 that. But when you look at, uh, the surface, one of
3 the things that happens to metal, frequently, that's
4 in a fire, is it rusts or oxidizes very quickly, and
5 we see that this seat is -- is oxidized evenly, for
6 the most part, over all of its surfaces.

7 During a fire, a lot of times the
8 protective coatings that would be on metal are
9 burned away. If there's oil or paint or whatever
10 might be protecting that from the elements, as
11 well as the -- the process of the fire, is -- is,
12 by its definition, of rapid oxidation. So we see
13 metal objects in a fire of rusting very quickly.
14 In addition to that, there's actually some little
15 fragments of charred remains there.

16 Q All right. Is that why, um, just for example
17 purposes, people who have burn barrels, they
18 don't seem to stay new very long?

19 A That's correct. They rust very quickly.

20 Q All right. Um, now, before we leave this
21 particular -- Well, actually, it would be a good
22 transition. I want to go back and revisit
23 something that we talked about just a few moments
24 ago, and that is, you, uh, told us that there
25 were remains of multiple steel-belted radial

1 tires.

2 Um, based on your examination of the pit
3 area, itself, uh, can you give us a rough
4 approximation of how many tires may actually be
5 reflected in the remains which were recovered?

6 A Based on my experience from looking at other burned
7 tires and different fire scenes, I could certainly
8 comfortably say it was in excess of five. Probably
9 more, uh, comfortably. But because they were so
10 entwined, it was difficult to pull them apart and
11 separate how many different tires that we had there,
12 because they were all so comingled together.

13 Q All right. Now, based on your, um, training and
14 experience and research, are you familiar, um,
15 with tires as a potential fuel source?

16 A Yes. I've actually burned them.

17 Q All right. Um, tell us, what type or what kind
18 of fuel source would a tire be?

19 A A tire is actually a very excellent fuel source. Uh,
20 those of you who have seen them burning on
21 television, or in real life, know that they burn with
22 great intensity. Um, I'm actually hard-pressed to
23 think of a commonly available material that's in
24 solid form that would be a better material to use to
25 accelerate a fire. And by accelerating, we're

1 talking about, by its definition to a fire
2 investigator, something that would make the fire burn
3 with greater intensity, a better fuel, or a better,
4 uh, oxidizer. And, uh, I -- I think it's realistic
5 to say that tires can be a form of a solid
6 accelerant. They burn with great intensity. They
7 release a lot of energy.

8 In fact, uh, studies have shown that one
9 pound of tires releases about 15 thousand BTUs of
10 energy as it burns, which is a pretty sizable
11 amount of energy.

12 Q And, um, what -- Give us an example, what is a
13 BTU?

14 A It's a -- By its definition, it's a British Thermal
15 Unit, and it's the amount of energy that's required
16 to heat one pound of water, one-degree Fahrenheit.

17 Q What's the weight of an average passenger tire?

18 A Twenty pounds.

19 Q All right. So one passenger tire would -- could
20 be expected to generate how many BTUs of energy,
21 roughly?

22 A About three hundred thousand.

23 Q All right. Could you put that into context for
24 us? Um, for instance, an average furnace in a
25 home? Anything like that? Can you relate that

1 BTU figure in --

2 A I -- I can try. Um, you know, your furnace size will
3 vary based on the size of the home and its
4 efficiency, but, uh, like in my home, I have a
5 hundred and -- a hundred and fifty thousand BTU
6 furnace, and that's how much energy it can put out in
7 one hour, uh, in order to heat that home. And that's
8 probably a pretty average size. So that's about
9 equivalent to half a tire.

10 Q All right. Now, um, if one is burning, um, two,
11 three, four, five tires, what kind of fire are --
12 are we -- would we expect to see?

13 A Uh, well, you'd see several things. First of all, I
14 think most of us know that a fire, in many cases,
15 will give off a pretty distinguishable, uh, black or
16 dark smoke from the burning of the tires, but the
17 intensity of the fire will be great. It will be a --
18 a very bright flame, usually in an orange color, and,
19 um, uh, you'll have a flame height -- it may vary,
20 depending on how the tires are oriented, if they're
21 flat or standing up, or maybe sloped up, but, uh,
22 generally, you'll see a flame anywhere from six to
23 nine feet would be a good average.

24 Uh, the other thing is, if you're
25 burning multiple tires at a time, um, for a human

1 to approach it is pretty difficult because of the
2 radiant heat that's coming off of it is a safety
3 hazard.

4 Q All right. How close would you be able to get to
5 a fire in its full effect? If you've got four or
6 five tires going at one time, would you be able
7 to be within two or three feet or would you be --

8 A No. No. I know from my own personal experience of
9 burning tires, I -- you know, I needed a long
10 implement, even if I'm burning one or two tires at a
11 time. And if you had three or four, you probably
12 wouldn't even be able to get close to it without a
13 rake or something, without getting some, you know,
14 uncomfortable feeling, and maybe even some, uh, skin
15 damage, thermal damage to the skin.

16 Q All right. Now, we talked a little bit about,
17 um, steel-belted radial tires. But how about
18 regular radial tires that don't have steel-belt
19 reinforcement? Are they a similar fuel source?

20 A Well, they're a very good fuel source. In fact,
21 there's many tires out there that don't have steel
22 belts in. Typically, uh, trailer tires. In the
23 sense of a snowmobile trailer or a utility trailer.
24 As well as there's glass-belted radial tires, and
25 they don't use that, uh, steel cording, so to speak,

1 that you would see in there. So there's, you know, a
2 fair number of tires out there.

3 Q Was there any way for you, after examining this
4 scene, to determine whether there were any
5 regular, uh, radial-belted tires or glass-belted
6 radial tires there?

7 A No.

8 Q Uh, in terms of their consumption, do they leave
9 a -- the similar type of ash and residue that you
10 previously described and attributed to the
11 steel-belted radial tire?

12 A Yeah. Their construction is basically all the same,
13 with the exception of the -- the belting material
14 being different.

15 Q All right. Now, in terms of, um, the, uh,
16 investigation that you've been involved in, is
17 there -- can you give us a range of how long it
18 would take to consume a human body in a fire to
19 the degree that, um, the remains that you
20 recovered here suggest?

21 A I couldn't give you an exact number of hours, um,
22 because there are some variables. If a body is
23 dismembered, it would burn faster because of higher
24 surface exposure.

25 Q Let's stop right there and start with that. Why

1 is that? Explain that?

2 A Well, if -- if you're looking at a body in a fire,
3 you have to consider it a piece of fuel that's --
4 that's exposed to the fire. And anytime you have
5 fuel with more surface area, it's going to burn
6 better.

7 It's like taking a -- a 12-inch stack of
8 newspapers and setting it on fire versus
9 separating all the newspapers out and giving it
10 more surface area. Obviously, the newspapers
11 will burn quicker.

12 In addition to that, when you're talking
13 about a body, one of the effects that -- first
14 effect that the fire has on the human body is to
15 dehydrate it, because I'm sure all of you know
16 that we have a lot of moisture in our bodies as
17 we're living here now, and that moisture has to
18 be driven out in order for a fire to consume the
19 body to reduce it down to fuel and consume it,
20 and down to its eventual skeletal remains.

21 So when you dismember a body, or if
22 there's some sort of an injury to the body, the,
23 uh, body will tend to bleed out, and if there's
24 less blood in the body, it actually will be
25 consumed quicker, because there'll be less

1 moisture for it to be, uh, dehydrated and
2 evaporated off before it's consumed.

3 Q So are you suggesting, then, if there are some
4 kind of pre-fire wounds to the body, that may
5 hasten the, uh, consumption of the body in the
6 fire?

7 A Exactly.

8 Q What are some of the variables? You -- you
9 mentioned there are a -- a host of variables, uh,
10 involved that would directly impact on how long
11 it would take to consume a body in a fire. What
12 are some of those variables oth -- other than the
13 one we just talked about?

14 A Well, the type of fuel that's used certainly would be
15 an important factor. Tires would be a very good
16 fuel, and would speed up that process as compared to
17 say, green wood or some different types of firewood.
18 Uh, the type of, uh, weather conditions that are
19 present. Uh, heavy winds, cold weather, extreme cold
20 weather, those would all be factors there, uh, as
21 well as the orientation of the fuel and the body.

22 And what I'm saying there is, um, if a
23 body's left in a scene, and it's undisturbed, the
24 part of the body that's in contact with the
25 ground, if you will, is protected by the ground

1 or the surface that it's laying on. We call
2 that, quite frankly, a protected area. Uh, if,
3 uh -- As in any type of fire, if you were to stir
4 the fire and mix up the fuel, that fuel tends to
5 burn better, and you -- you're removing --
6 exposing the protected area.

7 So if a body is in a fire, and at some
8 point the -- the body is moved around, you'll be
9 exposing more of its surfaces and you'll be
10 hastening that, uh, consumption process also.

11 Q All right. Now, um, what about continued
12 exposure to fuel or adding fuel? I mean, if you
13 were, uh, actively tending such a fire, what
14 effect would that have?

15 A Well, that would certainly be probably a requirement
16 in order to burn a body out in an open pit, uh,
17 unless you had just an extraordinary amount of fuel,
18 like we have in a house fire. Um, but if you're
19 talking about an open burn pit like the one we saw
20 there, um, you would have to be adding fuel in order
21 to continue that consumption process, because it
22 would take multiple hours in order to destroy a body
23 in a fire in an open surrounding like that.

24 Q All right. Um, I'm going to have, uh,
25 Investigator, uh, Wiegert, um, bring over a

1 couple of, uh, exhibits and have you take a look
2 at them. We'll start with the rake. Um, if you
3 would tell us, again, the exhibit number on
4 there?

5 A It's Exhibit No. 170.

6 Q All right. Exhibit -- Referencing, then, to, uh,
7 Exhibit No. 170, um, have you seen that item
8 before?

9 A I have. Yes.

10 Q And tell us about the condition of that, uh,
11 exhibit? The rake? Exhibit --

12 A May I stand --

13 Q -- 170.

14 A -- just stand up though?

15 Q Yes, please.

16 A Okay. Um, this is a rake that was found, uh, by the
17 burn pit. I guess I'd call it kind of a soil or a --
18 a beach rake, is typically what it has. Uh, you can
19 see that the bottom third or fourth of it is actually
20 charred, and you can see some of the charring,
21 especially on the sar -- side that would be exposed
22 down or towards the fire if it had been used to rake.

23 In addition to that, you can see some
24 wires in there, and those are some of those
25 steel-belted radial wires that I was telling you

1 about that we had observed in the burn pit. So
2 this bottom third or portion of that rake has
3 been exposed to a fire.

4 Q All right. Very good. And, uh, the next
5 exhibit, which is a spade?

6 A Okay. And that's Exhibit 171, and it's just a
7 regular wooden-handled soil shovel, but, also, you
8 can see it -- it's been exposed to a fire on its
9 lower extremity by the darkening that's there, only
10 to a lesser degree than the rake.

11 Q I see there's also some oxidation on the edging
12 of the spade?

13 A Yes.

14 Q Is that reflective of fire exposure in your
15 opinion as well?

16 A That could very easily have come from the fire
17 because it would tend to rust quicker.

18 Q All right. Thank you. You may be seated. All
19 right. I'd like to return, again, to our
20 discussion of, um, fuel sources. Um, again, I'm
21 directing your attention to, um, Exhibit 169, the
22 picture, um, which is still on the screen, which
23 displays the, um, uh, rear car or van seat that
24 we've talked about. Exhibit 174.

25 With respect to Exhibit 174, are you

1 familiar with what type of, um, packaging or
2 seating normally accompanies a car seat?

3 A Well, there's usually some sort of a vinyl, or
4 fabric, or leather-type covering over it, but the
5 padding material, frequently, is a polyurethane foam.
6 Um, from a fire standpoint, polyurethane foam is --
7 is a tremendous fuel. Um, in fact, uh, we have a --
8 a nickname for it, in the fire investigation, as
9 solid gasoline, uh, because, just like a tire, it is,
10 uh, either a synthetic or a petroleum distillant, but
11 once it's ignited, it has a tremendous amount of heat
12 release into a room, uh, or into the environment
13 that's burning. It's -- it's a very good fuel.

14 Q Uh, is it on a par, as it were, with tires in
15 terms of its ability to generate BTUs?

16 A Uh, I'm not sure of the exact breakdown, but I -- I
17 believe that it is. Um, yeah. In fact, I -- if I'm
18 not mistaken, it might be slightly better than en --
19 energy released pound for pound than that, just
20 because of its -- more often than not, it's a
21 capillary-type structure, an open cell, and it tends
22 to burn with greater intensity.

23 Q All right.

24 ATTORNEY FALLON: If I may just have a
25 moment? We will pass the witness. Thank you.

1 THE COURT: Cross.

2 CROSS-EXAMINATION

3 BY ATTORNEY FREMGEN:

4 Q Mr. Pevytoe, you indicated that you had arrived
5 on the scene on November 9?

6 A That's correct, sir.

7 Q Okay. And when you got there, your first, um,
8 step was to simply assess or evaluate the burn
9 pit?

10 A Well, that was the primary one. But I -- I looked at
11 other areas around that were designated to be
12 searched and whatever, and tried to make assessments
13 as to what type of needs we would have for personnel
14 and materials and that.

15 Q But -- but, in particular, you -- you were --
16 your attention was drawn to this burn area or
17 burn pit?

18 A Well, there were several areas, and the burn pit was
19 included in that.

20 Q When you arrived to look at the burn pit in
21 particular, uh, did it appear to be as Exhibit
22 169 shows?

23 A No. It was covered with a tarp.

24 Q Okay. Did you take the tarp off?

25 A Uh, they removed a portion of it, yes.

1 Q Were you able to see the van seat and the -- the
2 wiring, the large wad of wiring?

3 A I believe so. Yes.

4 Q Had they already removed much of the soil or the
5 upper ash from the burn pit?

6 A Well, they had removed the loose ash that was in the
7 pit, but there was still the darkened area and some
8 remains.

9 Q So when you went to -- Was it at the Sheriff's
10 Department that you next went to -- to look at
11 some of the items that had been removed?

12 A Well, that was on the following day.

13 Q Okay.

14 A Uh, on the 10th, in the morning, I went to the
15 Sheriff's Department, and I did a preliminary
16 examination of the, um, ash that had been removed
17 from the pit previous to me being at the scene.

18 Q So, obviously, you didn't remove any of that ash?

19 A That's correct.

20 Q And you didn't sift through the ash?

21 A Which ash?

22 Q The ash at the Sheriff's Department?

23 A Yes.

24 Q You did sift through all that ash?

25 A Well, we examined that multiple times, because when

1 you're examining something, looking for small
2 evidentiary items, such as bone fragments and dental
3 fragments, it may take time. So, as I said, on the
4 10th, that was a preliminary examination, but, also,
5 in December, we went back and literally went through
6 it piece by piece, over a course of many hours with
7 many people there, using a long, wooden skewer to
8 remove each little fragment and examine it and go
9 through the process there. So each time we were
10 doing a more and more detailed examination. It's a
11 very complex cli -- uh, process.

12 Q So over a period of about 30 or 40 days, you were
13 able to, several times, go through the items,
14 sift through items, to find, uh, things that
15 might have evidentiary value?

16 A I'm not sure of the time frame, but it was examined
17 multiple times, yes.

18 Q Now, you indicated that you didn't find any bone
19 in the van seat?

20 A That's correct.

21 Q But you did find some small pieces in the, uh --
22 the ba -- uh, the ball or the wad of -- of
23 steel-belted tire wiring?

24 A That's correct. I found multiple pieces entwined
25 into the mass of the wire.

1 Q And, again, just go back. No one had removed the
2 wiring or the van seat from the burn pit, just
3 some of the burn pit ash, itself?

4 A That's correct.

5 Q So when you went back, there was still more to do
6 in processing the burn pit?

7 A That's correct.

8 Q And -- And you were the one that, then, processed
9 it at that point? You and others?

10 A Yes, sir.

11 Q Did you oversee or supervise the final processing
12 of the pit?

13 A Uh, more or less, and as well as participated in it.

14 Q Now, you -- you estimated that a fire that, uh,
15 had approximately five tires -- And -- and
16 that -- that was your approximation of the number
17 of tires based on the -- the -- the amount of
18 steel-belted wiring in the burn pit?

19 A Well, that -- that's not fully correct, because there
20 could be additional tires that had -- would not be
21 steel-belted. Uh, what I believe my testimony was,
22 is that there was -- I could see -- I'm -- feel
23 comfortable in saying that there was more than five
24 steel-belted radial tires there. I certainly can't
25 give you an estimate as to glass-belted utility

1 tires, all those different things that might have
2 been present there. Judging by the ash that was
3 remaining in the pit, there was certainly a quantity.

4 Q And -- And you -- you agree with me that you
5 can't tell when tires may have been burned in the
6 pit as well?

7 A That's correct. I could just say that the remains
8 were there.

9 Q And the pit, itself, may have been used many
10 times other than immediately preceding law
11 enforcement coming to the pit?

12 A It's possible, but I don't know. I can only tell you
13 what I saw that day.

14 Q Correct. There are things you don't know about
15 the pit that you can't -- even from your
16 observations and your training, you're unable to
17 tell?

18 A That's correct.

19 Q Under the hypothetical that, uh, Attorney Fallon
20 had suggested, with, um, a number of tires in the
21 pit, you'd indicated the intensity level would,
22 uh, potentially see flames of between six and
23 nine feet; correct?

24 A Well, it'll vary with the fuel orientation and the
25 amount of fuel that's present there, but I have

1 burned tires and I know from my research that six to
2 nine feet -- And you have to remember that the flames
3 are kind of going up and down, so the estimate is
4 going to vary as it goes along. There may be times
5 where it could go higher than that, visually, and
6 then come back down.

7 Because -- What we call that is a
8 diffusion flame process. So it's not a, uh --
9 Or, excuse me. It's a turbulent flame, not a
10 diffusion flame. A candle flame is a diffusion
11 flame. It's a perfect flame. It doesn't seem to
12 vary. When we get an open fire, we see the
13 columns of visible, uh, luminescence coming up
14 and going down. The flames lick up and down.
15 That's why we see some variation of the flame
16 height.

17 Q And -- And the intensity of the fire, itself,
18 isn't simply vertical? It, uh -- be -- will
19 expand outward in a horizontal fashion as well?

20 A Well, you have heat transfer from several different
21 methods. One of those is radiant heat. And that
22 will be coming outward, unless it's impeded by an
23 obstruction.

24 Q And -- And your testimony, I believe, was that
25 the radiant heat, the intensity, potentially,

1 would, uh, make it very difficult, or maybe even
2 impossible, for someone to be several feet from
3 the fire?

4 A Well, that will depend on the intensity of the fire
5 at any given point. Uh, I just know from my own
6 practical experience of a burning, being by -- by
7 some burning tires, if you have multiple tires, and
8 it's -- they're burning freely in a full -- free
9 state of burn, it is difficult to approach them or
10 get close to them because of the radiant heat causing
11 thermal damage to the skin.

12 Q And, again, I simply was asking if that was what
13 your testimony was before with Attorney Fallon,
14 that that could have -- you know, that amount of,
15 uh, of -- of tires, or what have you,
16 accelerants, in the fire, because of the radiant
17 heat, would be very difficult to get within a
18 couple of feet?

19 A It would be, but you have to remember the variable of
20 how many tires are burning at a given time, because
21 the intensity of the fire is going to go up and down
22 with the fuel source. So if you have several tires
23 that are in full state of combustion, yes, it would
24 be difficult. If you have tires that are not fully
25 burned, or are already partially burned, then it

1 would be easier to approach.

2 Q So someone could be standing right next to the
3 fire?

4 A At a given time, yes, depending on the fuel that's
5 burning, because the fire will go up and down, and
6 you can approach, and have to stay away because of
7 the intensity of the fire.

8 Q And, hypothetically, with the more intensive
9 radiant heat, might have to stand three or four
10 feet beyond the fire?

11 A Correct.

12 Q From your, uh, experience and training, uh, are
13 you aware of any studies that have, um, been
14 conducted in regards to the, um, level of
15 intensity of -- of -- of the radiant heat from
16 one versus five tires? For example, wood versus
17 a -- a -- a tire-type of substance or
18 petroleum-based substance?

19 A There's a lot of studies that deal with the energy
20 release of various materials that are out there.

21 Q Would one tire in a fire be less intensive than
22 five tires in a -- a fire at one given time?

23 A Yes, because of the amount of energy that's being
24 released. Without getting too in depth, the
25 temperature would remain the same. Okay. The

1 temperature is not going to go up. It's always going
2 to be about the same, because they're going to burn
3 at the same temperature level.

4 However, the more fuel you're -- you add
5 in there, it -- the fuel is all being consumed
6 simultaneously. It will release more heat energy
7 in there just because more fuel is in the
8 combustion process.

9 Q So -- Correct. The temperature doesn't change.
10 It's the -- the energy or the -- that's released
11 from that fire that would be increased or
12 intensified?

13 A Correct. It's called a heat release rate. We
14 generally measure it in joules and megawatts.

15 Q A -- again -- Again, hypothetically, would wood
16 burn at the same intensity as one petroleum-based
17 tire, for instance?

18 A What specie of the wood and moisture content?

19 Q Let's just say standard oak wood.

20 A What's the moisture content?

21 Q Dry.

22 A How dry?

23 Q Fifty percent dry.

24 A Would not burn with the same intensity.

25 Q Okay. Would plastics, for instance, let's say,

1 milk cartons, burn at the same intensity as a
2 tire?

3 A Plastic milk cartons? The one-gallon jugs? Or the
4 wax paper cartons?

5 Q The one-gallon jugs you would find, let's say, at
6 the -- the grocery store?

7 A I don't believe that they burn with the same
8 intensity, but there's a lot of different
9 compositions there, so I'm reluctant to say, without
10 knowing its exact chemical composition, to being able
11 to research it.

12 Q I -- I'm not trying to belabor the point, but if
13 I -- my -- if you don't mind, I've -- have a
14 couple extra questions in that regard.

15 A Ask away.

16 Q All right. Clothing. Does cotton fabric
17 clothing, for instance, for example, burn at the
18 same intensity level as, um, one tire?

19 A No. Most things burn at the same temperature range.
20 Intensity, as far as the heat release, is going to
21 vary with the fuel product. And you -- you have to
22 be careful with the terms you're using. If you're
23 talking about the heat release rate, it's going to be
24 greater from certain products than others. If that's
25 what you're referring to as intensity? That's what

1 I'm assuming you're referring to as intensity.
2 Q I -- I mean -- Exactly. The radiant heat
3 released from the fire.
4 A The heat release rate from the fire?
5 Q Correct.
6 A Okay. That's what you mean?
7 Q Correct.
8 A All right. It will vary with the types of fuels.
9 Q Okay.

10 ATTORNEY FREMGEN: I have nothing else.

11 THE COURT: Any redirect, Counsel?

12 ATTORNEY FALLON: No, redirect.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You're welcome. Your next
16 witness, Counsel?

17 ATTORNEY FALLON: State would call
18 Leslie Eisenberg.

19 THE CLERK: Please raise your right hand.

20 **LESLIE EISENBERG,**

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

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

25 THE WITNESS: My name is Leslie Eisenberg,

1 E-i-s-e-n-b-e-r-g.

2 **DIRECT EXAMINATION**

3 BY ATTORNEY FALLON:

4 Q What is your occupation?

5 A I am currently employed at the Wisconsin Historical
6 Society as the program coordinator for the State of
7 Wisconsin's Burial Sites Preservation Program. I am
8 also, um, privately employed as a forensic
9 anthropologist.

10 Q What is a forensic anthropologist?

11 A A forensic anthropologist is someone who has had, uh,
12 training in anthropology, and, specifically, in a
13 subfield called physical anthropology, um, that looks
14 at human variation, how we are the same and different
15 from each other, um, with a specific focus on, uh,
16 anatomy and the study and understanding of -- of
17 human remains as it applies in a legal context.

18 Q All right. Doctor, uh, how is it that you are
19 involved in this case?

20 A I was requested, um -- My assistance was requested by
21 the Calumet County, uh -- by Calumet County law
22 enforcement, to provide assistance, um, looking at
23 human remains that, uh, were recovered in November of
24 2005.

25 Q And, um, you are here today to do what?

1 A I am here today to explain my findings, and, uh, also
2 here today to render several opinions, uh, notably,
3 about the sex and age of the remains of the
4 individual I examined, as well as rendering an
5 opinion as to the manner of death. Uh, how, um --
6 how the person, uh, whose remains I examined, um,
7 died.

8 Q Before we do that, um, if we could, uh, talk a
9 little bit about, um, your background and
10 training.

11 Um, first of all, beginning with your
12 educational experience, um, what degrees do you
13 hold?

14 A I hold a, um, Bachelor's Degree in anthropology, a
15 Master's Degree in anthropology, a Ph.D, or a
16 Doctorate, in anthropology. Um, and I am also a
17 board certified forensic anthropologist. One of 75
18 in the country.

19 Q What does board certified mean?

20 A Board -- Uh, being called a board certified forensic
21 anthropologist, um, means that you've jumped through
22 a lot of hoops and have had your work, um, carefully
23 scrutinized, um, by members on the American Board of
24 Forensic Anthropology. Uh, in order to receive the
25 title of what's called, diplomate, uh, which really

1 means board certification, one must, uh, submit case
2 reports for evaluation by the board. And the board
3 then will determine whether or not you are fit, um,
4 or ready to sit for an all-day examination, uh, the
5 morning of which involves a written examination, and
6 the afternoon is a hands-on practical examination
7 involving the examination, analysis, and
8 interpretation of bone in, uh, many different
9 conditions, um, much of it fragmentary.

10 Q What, if you would, um, are some of the key
11 positions or responsibilities that you have held
12 in the field of forensic anthropology that assist
13 you in performing that work?

14 A Uh, notably, I was a consultant for the Office of
15 Chief Medical Examiner of New York from 1986 until
16 1993, when I moved to Wisconsin, um, to take the
17 position as program coordinator for the Wisconsin
18 Historical Society's Burial Sites Preservation
19 Program, where I have occasion, on a fairly regular
20 basis, to examine and identify human bone, animal
21 bone, and so on, for law enforcement. Most of that
22 bone comes from archaeological or older context.

23 Uh, I also, since 1995, have been a
24 member of a federal disaster team, a regional
25 federal disaster team, that goes by the -- the

1 acronym DMORT, D-M-O-R-T, which stands for
2 Disaster Mortuary Operational Response Team.

3 And in that capacity I have been
4 deployed on several occasions. Uh, the earliest
5 of which was in 1999, uh, at the site of an
6 Amtrak train crash in Bourbonnais, Illinois,
7 where there were fatalities primarily as a result
8 of, uh, um, a fire in the sleeping car of -- of
9 that train.

10 Um, after that, I was asked, uh,
11 immediately after the World Trade Center attacks
12 on September 11, to be one of the first teams to
13 respond to the east coast disaster, um, where I
14 had occasion to work to identify, um, and
15 examine, uh, fragmentary human and nonhuman
16 remains. Many of those remains, uh, had been
17 exposed to considerable trauma, uh, and burning,
18 as you might imagine.

19 And, more recently, in September of
20 2005, I had occasion to be called or deployed
21 down to Mississippi after the, uh, Hurricane
22 Katrina, and at the same time, Hurricane Rita,
23 uh, came through, to help identify remains, um,
24 of, uh, individuals who died, uh, during the
25 hurricane, as well as collecting and identifying

1 skeletonized human remains that had been washed
2 out of cemeteries, uh, in-ground burials as well
3 as above ground mausoleums.

4 Q All right. And, um, so that we're -- How long
5 have you held your board certification in the
6 field of forensic anthropology?

7 A Four ten years now. I received that certification
8 in, uh, 1997.

9 Q Um, in addition to the, um, DMORT, uh,
10 appointments and status, have you received any
11 other, um, noteworthy appointments?

12 A Um, yes, I have. Um, I have, um -- May -- Are you
13 talking about memberships or -- If you can clarify
14 for me --

15 Q Sure. In the, uh -- In the field of forensic
16 anthropology, are -- are you -- there are some
17 appointments or memberships of groups that you
18 find particularly pertinent that assist you in
19 conducting your work?

20 A Understood. Thank you for that clarification. Uh,
21 from 1999 through 2005 I was an elected board member
22 for the American Board of Forensic Anthropology, and
23 for the last three years of that six-year
24 appointment, I was elected secretary of that board.

25 Q Do you have any particularly, um, uh -- Well,

1 let's ask it this way. Do you have any
2 publications in the field of forensic
3 anthropology?

4 A Yes, I do, sir.

5 Q Tell us about those?

6 A Um, some of those publications are jointly authored
7 by others with whom I've worked. Um, they appear in
8 what is the preeminent journal in the field of
9 forensic anthropology, which is called the Journal of
10 Forensic Sciences.

11 Uh, I also have a number of other
12 publications, uh, that span the, um -- the fields
13 of archaeology and forensic anthropology that are
14 specifically focused on human remains and the
15 identification of human remains.

16 Q I'm going to have, uh, Investigator Wiegert show
17 you Exhibit 199.

18 A Yes, sir.

19 Q All right. And do you recognize that?

20 A Yes, I do. It's my resumé, or what, uh, is referred
21 to in the academic field as a curriculum vitae, a
22 history, um, of your accomplishments, if you will.

23 Q And did you prepare that?

24 A Yes, sir, I did.

25 Q Is that a true and accurate summary of your

1 educational training and professional experience
2 in both, um, uh, forensic anthropology and
3 otherwise?

4 A Yes, sir, it is.

5 Q Very good. All right, Doctor. Directing your
6 attention, then, to this particular case, when
7 did you become involved in this case?

8 A I initially became involved in this case through a
9 telephone message that was left for me on November 9
10 of 2005.

11 Q What were you asked to do?

12 A The, um, contents of that voicemail message that was
13 left for me was, uh, that some remains had been
14 found, um, and I was, uh, asked to examine those
15 remains that had been left for me, uh, in a sealed,
16 uh, container in my office awaiting my return.

17 Uh, at the time I received that call on
18 November 9, I was in transit back to Madison from
19 a, uh, um, national, um, conference on missing
20 persons in Denver, Colorado. I was one of
21 several people at the time who was representing
22 the state of Wisconsin at that conference.

23 Q And what were the tasks? What, specifically,
24 were you asked to do, um, by law enforcement?

25 A I was asked to examine, um, items that were in a, um,

1 flat, uh, cardboard box that had been sealed with
2 evidence tape when I received it. Um, and I was
3 asked to identify if any of -- of the items in that
4 box were of human origin.

5 Q I'm going to have Investigator Wiegert bring you
6 a series of photographs.

7 A Thank you.

8 Q I believe the first photograph there is marked as
9 Exhibit 183. We'll have that displayed on the
10 screen in a moment. Um, let me ask, do you
11 recognize that?

12 A Yes, sir, I do.

13 Q All right. And what is, um, depicted in Exhibit
14 183?

15 A I, along with other investigators, are sorting, uh,
16 through material that was collected, um, uh, from the
17 Steven Avery property, and -- and we are looking
18 through this material, uh, with the objective of
19 looking for any human remains or other objects of
20 significance that had been collected from that
21 property.

22 Q Tell us a little bit about that process that's
23 depicted in the photograph, if you would?

24 A The process, uh, that I used to, um, examine all the
25 material presented to me for examination, um, is a

1 fairly systematic process, and a process that every
2 forensic anthropologist goes through.

3 And -- And the first thing that I do,
4 uh, and the major contribution that any forensic
5 anthropologist can make to an investigation like
6 this, involves, um, the recognition and sorting
7 of human bone, and in this case burned human
8 bone, from burned and unbone -- unburned, uh,
9 nonhuman bone.

10 The next step in that process is looking
11 at the burned human bone that has been sorted out
12 to see if there are any diagnostic or telling,
13 um, attributes or traits on any of those
14 fragments, um, that can tell the anthropologist
15 something about whose remains you are looking at.

16 The next step in the process is taking
17 those diagnostic fragments and developing what we
18 call in the field a biological profile. And what
19 that means is determining, if you can, the age of
20 the individual, the sex of the individual, the
21 stature of the individual, how tall they were,
22 um, and the ancestry, if possible.

23 Also, uh, critically important is to
24 determine, um, if there's anything else you can
25 tell from those diagnostic fragments, including

1 the presence of any trauma to those remains, uh,
2 that may have been sustained or may have occurred
3 in what we call the antemortem interval, the
4 interval before death, the perimortem interval,
5 p-e-r-i-m-o-r-t-e-m, and that simply means at or
6 near the time of death, or in the postmortem
7 interval, uh, during a time after death.

8 And, um, the other activity that I
9 undertook with these burn fragments was trying to
10 see if I could refit any of those fragments with
11 each other.

12 Q Very well. What is the -- the next photograph?
13 I believe would be Exhibit 184; is that correct?

14 A That is correct.

15 Q And what is depicted in Exhibit 184?

16 A That is, uh, a photo of myself and some other
17 investigators looking through additional material
18 that had been collected for the presence of any human
19 remains, bone fragments, dental structures, or
20 anything else that we considered significant.

21 Q All right. And the next photograph? Exhibit
22 185, I believe?

23 A That is correct.

24 Q All right.

25 A Exhibit 185 represents, um, the interior and contents

1 of the box that was initially left for me for
2 examination on November 9 of 2005 that I had the
3 opportunity to initially examine the following day on
4 November 10, 2005.

5 Q All right. Let's stop there for a moment and
6 talk a little bit about the -- the box and its
7 contents. What were the condition of those
8 contents? The bones that you -- or -- or
9 fragments, is probably the best way of describing
10 it, when --

11 A Well --

12 Q -- you looked at them?

13 A As I look in this photograph and -- and on the
14 screen, what I can see, and what I saw at the time,
15 are, um, fragments of material, some of which were,
16 um, clearly identifiable as human bone fragments that
17 were heavily burned and, in some cases, calcined.
18 Some of the bone that you see that looks white in
19 color, um, is what we call calcined.

20 Um, it is, um -- It represents bone that
21 has lost its moisture content, because all bone,
22 um, has -- has fat content, has moisture content,
23 has blood running through it, and when it's
24 exposed to heat, and considerable heat, that
25 moisture, and the blood, and the -- and the fatty

1 tissue, the marrow, um, will all dry up, and the
2 bone, itself, the or -- the organic content of
3 the bone, um, what makes bone, bone, um, also
4 disappears. And the bone -- calcined bone
5 becomes, um, almost like a piece of porcelain or
6 ceramic in that if you, um, knock it against a
7 table, it will sound very much like a piece of
8 porcelain.

9 Q In terms of -- As a forensic anthropologist, who
10 often is called upon to attempt identification of
11 remains, are there varying levels or degrees of
12 destruction that you forensic anthropologists
13 utilize to categorize exactly the condition of
14 the items you're examining?

15 A We do. Um, in 1996, there was, um, a very basic
16 scheme developed, uh, by a forensic anthropologist
17 from Texas, and a colleague of his. Um, it -- it's
18 known as the Crow-Glassman Scales. C-r-o-w, hyphen,
19 Glassman, G-l-a-s-s-m-a-n. And what Crow and
20 Glassman did was set up a five-stage, or five-level
21 scheme, if you will, that talks about increasing
22 levels of burning on bone.

23 Uh, level one, for example, would
24 involve a body that was charred, but would be
25 visually recognizable, um, to, uh, people who

1 know -- knew him or her, or to family members.

2 And that starts with level one and goes
3 up to level five, and, increasingly, um, there
4 is, uh, more destruction to the body. The body
5 then becomes unrecognizable. Um, and, um, level
6 five is, uh -- depicts the body in a state that
7 is primarily only recognizable, because of its
8 fragmentation and burning, to forensic
9 anthropologists and forensic dentists.

10 Q And in nip particular -- And in this particular
11 case, what was the level or condition of the, uh,
12 fragments you were asked to examine?

13 A In -- In my opinion, the fragments that I was asked
14 to examine, that I identified as -- as, uh, burned
15 human fragments, would have fallen into that last
16 category, um, the most destructive category, level
17 five.

18 Q All right. Is this what is sometimes referred to
19 as the ultimate level of destruction?

20 A Uh, by some auth -- authors, yes, it is.

21 Q In this particular case, of all the fragments
22 that you examined, did -- you were -- were you
23 able to locate any, um, human skull fragments?

24 A Yes, sir, I -- I was able to.

25 Q A -- A -- Approximately, how many fragments were

1 you able to locate?

2 A There were --

3 Q Or identify?

4 A There were approximately 58 fragments that were, um,

5 identifiable as human and diagnostic to the point

6 that I could say these fragments came from a human

7 skull.

8 Q In terms of, um -- How much of a human skull was

9 repre -- was represented by those 58 fragments?

10 Rough estimate, if you have one?

11 A A rough estimate, um, I would say, perhaps, a

12 quarter, and that may be an exaggerated estimate.

13 Q Could be less?

14 A It could be less.

15 Q All right, Doctor, let's begin with some of your

16 conclusions or findings. First, based on your

17 examination of the bones recovered from the pit

18 behind the garage of Steven Avery, did you find

19 evidence of human remains?

20 A Yes, sir, I did.

21 Q And were they in, um -- Were you able to identify

22 the relative age of the person whose remains you

23 examined?

24 A Yes, I was able to determine a relative age of -- of

25 the person whose remains I did examine.

1 Q Tell us about that, please?

2 A There are, um, many techniques that forensic
3 anthropologists use to determine someone's age, um,
4 when remains are unrecognizable and either too
5 decomposed or, um, skeletonized for a traditional,
6 um, autopsy.

7 Um, in this case, there, um -- Because
8 of the fragmentation and burning, um, many of --
9 of the characteristics or traits we look at to
10 make that determination, um, were not present or
11 not recognizable because of the condition of the
12 remains.

13 But there were several areas, um, of the
14 face, um, skull, if you will, and what we call
15 the postcranial remains, the remains below the
16 skull, that were able to help me come to a
17 determination of an approximate age of the
18 individual whose remains I examined.

19 Q And what was that?

20 A My determination was that the remains of the
21 individual I examined were no older than 30 to 35
22 years of age.

23 Q All right. If you could explain for us that --
24 that range, that step, you just gave us, 30 to
25 35, in terms of the field of forensic

1 anthropology and identification, what does that
2 mean or represent?

3 A Well, what that means to all of us, really, is that
4 once we, um -- as we age, and at about the year --
5 the age of about 30 to 35, um, our body starts
6 showing signs of wear, and that wear is -- is
7 degenerative. In other words, it's something that
8 happens with use, as -- as we use our bodies to do
9 lots of things. And that's at about the time when
10 forensic anthropologists can pick up signs of
11 arthritis, or what's sometimes called degenerative
12 joint disease, on many parts of the skeleton.

13 Um, what I did note, from the joint
14 surfaces that were present to examine, was that
15 there were absolutely no traces of the beginnings
16 of arthritis, um, which allowed me to cap the age
17 as no older than 30 to 35 years.

18 Um, I also had an opportunity in looking
19 at the skull fragments, um -- And some of those
20 fragments had suture lines. Um, when we think of
21 the skull, we may think of a -- a -- a ball-like
22 structure, or a sphere-like structure, but, in
23 fact, our skulls are made up of many joi -- uh,
24 bones that come together at what are kind of
25 joints. They're not like a shoulder joint or a

1 hip joint, but it's where the bones fit together,
2 almost like teeth in a zipper in -- in some
3 places, and -- and those openings, called
4 sutures, where those bones come together, uh, had
5 not fused, um, which is something you typically
6 see as someone, uh -- in someone who's much older
7 than 30 to 35.

8 Q All right. So, in effect, then, you're telling
9 us the -- these are the remains of a person who's
10 under age 30?

11 A Yes, sir.

12 Q All right. Were you able to determine the sex of
13 the person by the remains which were recovered?

14 A Yes, sir, I was.

15 Q And what -- what did you conclude?

16 A Based on examining certain diagnostic fragments, I
17 was able to determine that the remains presented to
18 me for analysis, those fragmented and burned remains,
19 were those of a female.

20 Q All right. I'm going to have, uh, uh, the next
21 exhibit, I believe the photograph is in front of
22 you, it should be at 186?

23 A That's correct, sir.

24 Q We have that now on the screen. Um, does this,
25 uh, photograph assist you in explaining why you

1 concluded these were the remains of a female?

2 A Uh, this -- this image, um, is -- is one of the areas

3 I looked at in the body that allowed me to make that

4 conclusion.

5 Q All right. Tell us about that?

6 A What --

7 Q Now -- Now, there is a laser pointer. It should

8 be right next to the --

9 A Ah, yes.

10 Q -- witness box?

11 A Thank you.

12 Q And if you would probably use the larger screen

13 to point, it might work better.

14 A Okay.

15 Q Are those shovels in the way? Rakes?

16 A No, they are -- they're not. Um, what we are looking

17 at in -- Here we go. What we are looking at in this

18 image are fragments from, um -- from a face, and we

19 are looking at these fragments as if we are looking

20 at someone face to face. And so let me point out

21 some of the landmarks to you to help you orient what

22 it is you're looking at.

23 Um, this area here represents the top of

24 the left eye socket. This fragmentary bone, um,

25 and this eye -- the top of the eye socket, is

1 actually part of the bone that continues up to
2 begin -- to become the forehead. So we have the
3 top of the left eye socket, the left half of the
4 nose. The nasal bones are two in number. And
5 what this fragment is, is the left half of the
6 nasal bones.

7 These are fragments from the right --
8 what would be the area above the right eye
9 socket.

10 This is a complete -- and one of the few
11 complete -- bones that I actually had an
12 opportunity to examine. A complete right
13 cheekbone. And while the placement may be a
14 little off in this photo, what you are looking at
15 here is the lower portion of the right eye
16 socket.

17 This is a fragmentary portion of the
18 left cheekbone, and a portion of a bone that runs
19 from the left cheekbone over and above the left
20 open -- the opening for the left ear.

21 Q All right. If we could go to the next exhibit,
22 uh, 187?

23 A Yes, sir.

24 Q And what are we looking at here?

25 A What we are looking at here is a closeup of -- of a

1 portion of what we saw in the previous graphic.
2 Excuse me. Again, this -- the top of the left eye
3 socket, the portion of what then continues up to be
4 the forehead, or what we call the frontal bone, and
5 the left half of the nose at -- this would be the
6 area that we would refer to as the bridge of the
7 nose. This is the left half of the two nasal bones.

8 Q All right. Now, with respect to the last two
9 exhibits, 186 and 187, what is it about them that
10 specifically assists you in, um, identifying
11 these remains as a female?

12 A Fairly diagnostic, or telling, to any forensic
13 anthropologist, or any biological anthropologist, is
14 that there are certain shapes that, um, are
15 characteristically female in the skeleton, and other
16 shapes, what we call morphology, that are
17 characteristically male. And one of those key
18 locations that anthropologists look at, um, is
19 actually the top of the eye socket.

20 In females, that rim, or ridge, is
21 fairly sharp and -- and, um, does not protrude.
22 In male skulls, that area, that edge, is very
23 blunt, and you often see heavy bone development
24 over the eye sockets. And we don't see that
25 here. I don't see that here. And what I see in

1 terms of morphology, and shape, and general bone
2 architecture to the facial bones, but especially
3 above the left eye socket, uh, leads me to
4 conclude that these facial bones and, in
5 particular, this bone here, um, comes from a
6 female.

7 Q All right. Now, um, Doctor, during the course of
8 preparing, um, and in reviewing the matters of
9 this case, did you have occasion to work with a
10 Tim Austin from the Wisconsin State Patrol?

11 A Yes, sir, I did.

12 Q And did he assist you with some of the, um,
13 exhibits that we're about to see?

14 A Yes, he did.

15 Q All right. If you would, uh, take your attention
16 to the next, uh, photograph? All right. And
17 this is Exhibit 188?

18 A Yes, sir.

19 Q And what are we looking at here with Exhibit 188?

20 A What we are looking at here is a graphic depiction,
21 um, of not a real skull, but a -- a
22 computer-generated skull, and, um, the arrows and the
23 descriptions on this graphic point to the areas of
24 the skull and the facial bones that have been
25 recovered, and identified by me, and described to

1 you, in the previous slides.

2 Q And that -- I see there's a notation, Evidence
3 Tag 8318. Is that at all referenced to the box
4 that we previously examined?

5 A Yes, sir. The area, uh -- We don't see all of it
6 here, but the identifier for this particular slide
7 that says, Evidence Tag 831 -- and we'll wait for the
8 8 to show up -- 8318, was the, um, evidence tag
9 identifier for that white opened box we saw earlier
10 on. Uh, the material that was illit -- initially
11 collected and, um, the material that I initially
12 examined and sorted through.

13 Q All right. All right. Next exhibit, please?
14 Should be Exhibit 189?

15 A Yes, sir.

16 Q All right. And, um, if you would, what is
17 depicted here?

18 A What is depicted here, through the work of, uh,
19 Trooper Tim Austin, um, are two, um,
20 computer-generated skeletons. Um, the one on the
21 left represents that of a female, and the one on the
22 right, that of a male.

23 Q All right. And, um, in terms of the, uh, eye
24 sockets, if you'd take a moment to, um, highlight
25 the distinctions that you've just been talking

1 about?

2 A In the fragmentary skull and facial bones that were
3 recovered, the area that I was pointing out a little
4 bit earlier was just above the left eye socket and
5 above, uh, the bridge of the nose. In this female
6 skeleton, on the left, I hope you can appreciate, um,
7 the roundedness and the sharpness of the rim, or the
8 top edge, of that left eye socket.

9 Q Would it help if we zoomed in on that?

10 A It may for the jury, sir. This area in particular,
11 um, is a hallmark of, um, what anthropologists
12 recognize, or identify, as -- as coming from a female
13 skeleton, because it's a relative, um, um,
14 gracileness or, um, I guess sharpness, and -- and,
15 um, smoothness of that edge. In contrast to what we
16 would see in a typical male skeleton, um, here's the
17 bridge of the nose, the top of the left eye socket,
18 and I hope you can appreciate or see, um, the area
19 here where above the left eye socket there's a
20 considerable buildup of bone, um, and, as well, the
21 edge or the shape of the top of the eye socket is
22 much more rounded and substantial.

23 Q Doctor, um, although you determined the relative
24 age and -- and sex of the person, were you able
25 to determine, um, ancestry or stature of the

1 person after your examination of the remains?

2 A No, sir, I was not. And that was, uh, because of the
3 extreme fragmentation and burning that did not allow
4 me to reconstruct, um, some of the long bones. In
5 particular, the thigh bone that I would typically
6 measure to develop a -- a stature estimate.

7 Likewise, many of the landmarks that I
8 would use to determine ancestry or racial
9 affiliation, uh, were not present because of that
10 fragmentation.

11 Q All right. As a forensic anthropologist, are you
12 familiar with the concepts of cause and manner of
13 death?

14 A Yes, sir, I am.

15 Q Um, first of all, tell us, um, are you frequently
16 asked to render opinions on, uh, for instance,
17 cause or, perhaps, manner of death?

18 A More often, and most often, I am asked to render
19 opinions as to what's called manner of death. By
20 what mechanism did someone die? Less often, cause of
21 death, because often that's the purview of a forensic
22 pathologist. But in cases like this, where the
23 remains are so fragmentary and, uh, are too
24 fragmentary, um, for a traditional autopsy, it often
25 falls to the forensic anthropologists to make a

1 determination about what's called cause of death and
2 manner of death.

3 Q All right. Then in your field of forensic
4 anthropology, what is the difference between
5 cause and manner of death, if you would explain
6 for us?

7 A As it's generally understood in -- in, uh, forensic
8 anthropology, cause of death is, um, fairly explicit.
9 In other words, what did the person die from?

10 Manner of death, however, speaks to the
11 mechanism. What caused the death? How did the
12 person die?

13 Q All right. Can you give us an example, for
14 instance, of a distinction that you might
15 commonly run across in -- in your forensic work?

16 A Oh, I guess cause of death, um, if -- if I pretended
17 to be a forensic pathologist for a minute, um, might
18 be, um, heart attack, or tuberculosis.

19 Um, a manner of death, um, for a heart
20 attack, might be, um, accidental. Manner of
21 death, uh -- in general, there are four different
22 categories, um, that are understood when we talk
23 about manner of death. And, um, one of those
24 categories can be a natural death, which might
25 result from a heart attack.

1 A second category of manner of death
2 might be considered accidental. Did someone fall
3 off a ladder, um, hit their head, uh, or sustain
4 a spinal injury and die accidentally?
5 Um, a third manner of death is suicide.
6 And fourth, most commonly recognized, is
7 homicide.
8 Q Is there sometimes a fifth? Such as unexplained?
9 A Unexplained. Or sometimes even a sixth, uh, being
10 undetermined.
11 Q Okay. Based upon your training and experience --
12 Excuse me. Based upon your training and
13 experience, and the examination that you
14 conducted in this case, do you have an opinion as
15 to the manner of death of the individual whose
16 remains you examined?
17 A Yes, sir, I do.
18 Q What is that opinion?
19 A It is my opinion that the remains of the individual I
20 examined died as a result of -- of a homicide, and,
21 in particular, homicidal -- what I am calling
22 homicidal violence.
23 Q All right. Now, during the course of this
24 investigation, um, did you have an opportunity,
25 uh, to meet and consult with a -- a physician by

1 the name of Jeffrey Jentzen?

2 A Yes, sir, I did.

3 Q And who is Jeffrey Jentzen?

4 A Dr. Jeffrey Jentzen is a very well-known and

5 well-respected forensic anthropologist who is the

6 medical examiner for Milwaukee County, Wisconsin.

7 Q All right. And just, generally, then, the

8 distinction between a forensic pathologist, and a

9 forensic anthropologist, which you are, just,

10 briefly, what's the difference?

11 A Well, if you ask a forensic pathologist what the

12 difference is, their first answer will be that they,

13 uh, have been to medical school. They are real

14 doctors. And forensic anthropologists are fake

15 doctors, because they only have a Ph.D. But, in

16 general, um, uh, forensic pathologists are doctors

17 who specialize, uh, in pathology and who have further

18 training and certification in a field called forensic

19 pathology, or pathology, um, that is applied in legal

20 context.

21 Um, they typically perform autopsies on,

22 um, all types of remains, most of which, I would

23 say, are recognizable. The -- the people can be

24 visually recognizable. Sometimes those

25 individuals, um, have died as a result of a

1 burning episode, or a drowning, um, or any other,
2 um, type of -- of, um, activity.

3 Q All right. And, um, did you and Dr. Jentzen look
4 at, um, several of the cranial fragments during
5 the course of this investigation?

6 A Yes, sir, on one occasion.

7 Q Very well. Um, I'd like to return, again, to
8 your opinion regarding homicidal violence, and
9 ask you, why do you believe, based on your
10 examination, that that is the correct or accurate
11 manner of death?

12 A After having examined all the fragments, and, uh, you
13 have just seen one box of 50 different containers
14 that I had the opportunity to, uh, sort through to
15 distinguish human from nonhuman bone, um, to look for
16 diagnostic human elements, to look for human bone
17 that may have showed signs of trauma, to try and
18 refit fragments that may have come from any one of 50
19 different containers, there were two, uh, skull
20 fragments, in particular, that, to me, showed clear
21 and, uh, unquestionable evidence for, uh, what I
22 consider antemortem, or before death, uh, trauma.

23 Q All right. Um, was there anything about the,
24 uh -- the fact that the fragments were burned or
25 calcined that attributed to your opinion on

1 homicidal violence?

2 A Well, I think anytime, um, remains are burned beyond
3 recognition, um, and, um, that burning is not of an
4 accidental nature, I think that the fact that these
5 remains came primarily from a burn pit, um, that the
6 fact that someone attempted to obscure the identity
7 of another individual through burning, certainly
8 could be considered, um, part of that umbrella
9 heading, homicidal violence.

10 Q All right. Doctor, would you look at the next,
11 uh, photograph? This is marked, I believe, as
12 Exhibit 190?

13 A Yes, sir.

14 Q What are we looking at in Exhibit 190?

15 A We are looking at something that's probably
16 unrecognizable to everyone in this courtroom except
17 myself. There are two skull fragments here. We are
18 looking at the internal side of two skull bones
19 that -- actually, three skull bones. I was able to
20 refit these two bones together along this, uh,
21 fracture break, as well as a third fragment that fits
22 along this edge.

23 These are three fragments from the left
24 side of a human skull, um, and one of those
25 fragments shows, uh, evidence that I believe

1 would speak to my determination of homicidal
2 violence.

3 Q All right. If you would take the, um, uh,
4 pointer and describe for us what it is you're
5 looking at?

6 A Yes, sir. Um, the reason I know that this is the
7 inside of a human skull, are these vessel
8 impressions, these blood vessel impressions, that
9 kind of look like spider webs, or an aerial view of
10 a -- of a road network somewhere in this country.

11 Um, the vessels that run along the
12 inside of the skull actually sit in these
13 channels, and, um, the positioning of these
14 channels, and the direction of these channels,
15 actually allows me to make a determination as to
16 whether this bone comes from the left side of the
17 skull or the right side of the skull.

18 These three bones are all part of a bone
19 called the parietal bone. P-a-r-i-e-t-a-l. And
20 we have a parietal bone on the left side of our
21 skull and a corresponding, or mirror, parietal
22 bone on the right side of our skull.

23 Q All right. And what is it about the indentation
24 at the top of the picture here which is of
25 significance to you in your opinion on homicidal

1 violence?

2 A When I looked at this fragment, there was an area of
3 this fragment that caught my attention almost
4 immediately, and it's this area here that I believed
5 was quite significant with respect to a -- a
6 determination of -- of hom -- homicidal violence.

7 To me, based on my experience, this
8 would be considered what's called internal
9 beveling. Now, remember, we're looking inside
10 the skull at this moment, and where the hard
11 compact bone of the inside of the skull stops,
12 um, what you're looking at is -- is kind of a
13 honeycomb-looking bone. That is, a bone that's
14 sandwiched between the outside of the skull and
15 the inside of the skull. And whenever there is,
16 um, a, uh -- an unnatural defect to the skull
17 that looks like this, um, where you have internal
18 beveling, or what some people call cratering of
19 the inside of the skull, um, it is identified,
20 uh, as, um, an entrance wound from a gunshot.

21 Q All right. Um, next exhibit? This is Exhibit
22 191?

23 A Yes, sir.

24 Q All right. And what are we looking at in Exhibit
25 191?

1 A What we are looking at here is the flip side of the
2 three bones we had just examined depicting the inside
3 of the skull. What you are looking at now is the
4 outer portion of the skull. And I would call your
5 attention to this area right here. That is the flip
6 side, or the other side, of the, um, area that I've
7 identified as an entrance wound from a gunshot.

8 Q All right. Now, I noticed, just so that we can
9 have it explained, there seem to be some, um, uh,
10 colored dots, and -- and, uh, one arrow on there,
11 if you could tell us, if you know, what those
12 are?

13 A I would be happy to. The, um -- Initially, because
14 there were so many fragments to examine, um, and
15 those fragments -- each were identified, um, with the
16 location from where they came, I thought it might be
17 necessary to begin to, um, mark the bone, um, to
18 reference their location of where they were initially
19 found. And what I started to do was, um, to mark
20 those individual fragments that had come from
21 different locations, or from the same general
22 location, simply with different color nail polish.

23 Um, additionally, the -- the skull
24 fragments were also taken to be x-rayed, and
25 whenever any of those fragments, um, showed

1 something unusual and unexpected in x-ray, those
2 fragments also received a nail polish color, but
3 of a different color to distinguish them from the
4 skull bone fragments that showed no unusual signs
5 in x-ray.

6 Uh, additionally, it's my understanding
7 that this copper-colored arrow pointing to the
8 opening, um, for what I believe is an entrance
9 wound on this left side of the skull, this, I
10 believe, was affixed or placed by, uh, staff from
11 the Wisconsin State Crime Laboratory.

12 Q And, as a matter of fact, um, to whom did you,
13 um, refer, um, these, um, fragments for further
14 radiological or metallurgic analysis?

15 A I had made contact with a forensic pathologist at the
16 Middleton Veterans Memorial Hospital in Madison, a
17 Dr. Michael Stier, S-t-i-e-r, who was able to set up
18 an appointment for me to have these, uh, skull
19 fragments x-rayed.

20 Q All right. And after they were x-rayed, did you
21 have anyone else at the Wisconsin Crime Lab
22 further examine them?

23 A Yes, sir. It was my recommendation that these
24 fragments -- The fragments that showed unusual
25 signatures, if you will, in x-ray, um, it was my

1 recommendation that those signatures be examined for
2 the presence of any non-natural element or object
3 other than what we would all expect to see associated
4 with human bone.

5 Q All right. And were they subsequently, uh,
6 examined by Kenneth Olson from the Crime Lab?

7 A Yes, sir, they were.

8 Q All right. Um, the next, uh, photograph, please?
9 This would be Exhibit 192?

10 A Yes, sir.

11 Q And what are we looking at in Exhibit 192,
12 Doctor?

13 A This is another one of those burned fragmentary skull
14 bones, uh, on which I identified what I believe is
15 another, uh, entry from a gunshot.

16 Q And what -- Which, um, type of the -- or what
17 part of the skull is depicted in Exhibit 192?

18 A What we are looking at here is a fragment from the
19 back of the skull, the part of the skull you can feel
20 when you rub your hand up and down above the nape of
21 your neck. It's called the occipital bone.
22 O-c-c-i-p-i-t-a-l.

23 Q All right. And, again, if you'd use the pointer.
24 Um, what was of interest or significance to you
25 with respect to this occipital bone?

1 A I saw the same bony signature, the same unnatural
2 defect, in this fragment from the occipital bone as I
3 did in the previous, uh, bone, the parietal bone,
4 from the left side of the skull, where you can see
5 that honeycomb appearance, uh, on the inside of the
6 skull.

7 And here we are looking at the inner
8 table, or the inside of the occipital bone,
9 seeing the same kind of concentric -- partial
10 concentric defect with the exposure of the
11 honeycomb portion, or the intermediate portion,
12 of the skull bone, um, where the force of the
13 entry actually, um, blows a larger area -- or
14 develops that cratering that I spoke about a
15 minute ago.

16 Q All right. Um, next exhibit, please? Now, we've
17 had some discussions regarding the parietal, uh,
18 defect. Um, we're showing you, now, Exhibit 193?

19 A Yes, sir.

20 Q All right. And does this, uh, show the relative
21 placement of the parietal bone and the defect
22 that you observed?

23 A Yes, sir, it does. What we are looking at is a
24 computer-generated image of a human skeleton, and we
25 are looking at that skeleton from -- you're looking

1 towards the left side of the skeleton. So we are
2 looking at the left side of the skull. And that area
3 identified with the arrow and the -- the purple or
4 lavender color is the parietal bone and the
5 approximate location of that initial defect that I
6 identified as a gunshot entry wound.

7 Q All right.

8 THE COURT: Counsel, I'm going to interrupt
9 just for a moment. Are we getting to the close of
10 this? Or, perhaps, it's appropriate to take a break
11 now?

12 ATTORNEY FALLON: Well, I was just
13 thinking of that. We have about 15 minutes or
14 so. Do you want to take a break?

15 THE COURT: Yeah. I think so. All right.
16 We'll take a 15-minute break.

17 (Recess had at 10:31 a.m.)

18 (Reconvened at 10:50 a.m.)

19 THE COURT: Proceed.

20 Q (By Attorney Fallon) All right. Doctor, I
21 believe we left off with discussion of the
22 parietal defect. We're going to go to the next
23 exhibit. See what is being projected now as
24 Exhibit 194?

25 A Yes,, sir.

1 Q All right. And what is, uh, depicted in Exhibit
2 194?

3 A We are looking at the, uh, back of a skull. Uh, the
4 back of a computer-generated, uh, skeleton. Um, and
5 focusing on, this time, not the parietal bone on the
6 left side of the skull, but the bone at the lower
7 back of the skull, called the occipital bone, and, in
8 particular, the approximate area of the second
9 internally beveled defect.

10 Q All right. Uh, next? Should be, I believe,
11 Exhibit, um, 138? Is that the next one in line?

12 A Yes, sir.

13 Q Okay. Exhibit 138, do you recognize that?

14 A Yes, sir, I do.

15 Q What is Exhibit 138?

16 A We are looking at, um, one of ten x-rays that was
17 taken on November 17 of 2005, depicting two of the
18 left parietal bones. And, in particular, um, the --
19 the fragment that showed the initial, um, unnatural
20 defect, uh, and the presence of four different
21 radiopaque areas, um, small particles that are white
22 in color.

23 There's one here, right within and
24 adjacent to this cratering. Again, these are the
25 vessels that tell me that this is the inside of

1 the skull.

2 Here's another one of those bright white
3 flecks. And there are two others. One is right
4 here, and one just below it. And these flecks
5 show up as bright white like this because they,
6 uh -- the x-rays cannot penetrate them or pass
7 through them like they can with the remainder of
8 the bone.

9 Q All right. Now, um, Mr. Olson from the Crime Lab
10 has advised us that, um, his findings were that
11 they were, um, uh, in this particular exhibit,
12 traces of elemental lead. My question for you,
13 as a forensic anthropologist, is that a naturally
14 occurring phenomenon in human skull tissue to
15 your knowledge?

16 A It is absolutely not a naturally occurring defect and
17 something I would never expect to see in bone that
18 had not sustained a gunshot wound.

19 Q All right. Uh, your next exhibit, then, is which
20 one, please? One thirty-nine, I believe?

21 A One thirty-nine, yes.

22 Q All right. Directing your attention, then, to
23 Exhibit 139, and, in particular, the, um,
24 fragment -- There are eight fragments. Your
25 attention is directed to the fragment on the

1 upper left-hand corner. Um, that fragment that
2 you have now circled, what is it that we're
3 looking at there?

4 A This particular fragment is yet another fragment,
5 that occipital bone fragment, the fragment from the
6 back of the skull, that also shows an internally
7 beveled defect. And in this case, adjacent to and
8 within that defect, are a minimum of ten different,
9 um, areas, um, particles of -- of this bright white
10 again, which, um, is of a substance different than
11 the surrounding bone, radiopaque, in that the x-rays
12 cannot pass through them.

13 Q And, um, is -- You said that was taken on
14 November 17, 2005. Is that before you began
15 your, uh, ref -- your cranial refit, um, efforts?

16 A Yes, it is, sir.

17 Q Okay. And just so that we're clear, um, is that
18 the inside or the outside of the occipital bone
19 at the back of the skull that's being depicted?

20 A Um, I do not know because I do not believe the
21 radiology technician who took this image indicated
22 whether it was an anterior, front, or posterior,
23 back, image. From what direction she was taking the
24 image.

25 Q Very well. Um, next, please? Should be, I

1 believe, Exhibit --

2 A The last exhibit I have before me is Exhibit 195.

3 Q Okay. Very good. Now, um, I'm going to leave

4 that on the screen for a moment and ask a few

5 preliminary questions. Do the presence of the

6 radiopaque, these impenetrable flecks, as it

7 were, are they supportive, in your mind, of your

8 diagnosis that, uh -- that the manner of death is

9 homicidal violence?

10 A Absolutely, yes.

11 Q And why is that, Doctor?

12 A These non-naturally occurring particles that have

13 been identified by the Crime Lab as having, um, lead

14 content are not -- would never be seen in bone that

15 had not been subjected, um, to uh, gunshot trauma.

16 Q All right. Now, of interest, I think, to many of

17 us, uh, is this: Is there any way for you

18 determ -- for you to determine, based on your

19 examination of the remains, which entry defect,

20 the parietal or the occipital, came first?

21 A No, sir, I cannot make that determination.

22 Q However, were you able to determine whether these

23 exist -- these defects existed prior to them

24 being subjected to the burning episode or after?

25 A Yes, absolutely, I could make that determination.

1 Q And -- and what could you determine? What is
2 your opinion?

3 A As I examined these fragments, it was clear to me
4 that, uh, their edges were similar in color to the
5 burning of the rest of the bone. And what that tells
6 me is that these edges, um, these fragments, the bone
7 was fragmented with the edges exposed at the time it
8 was exposed to fire.

9 Q Now, were there other human remains in this case
10 that were examined that were not of the
11 cranial -- not from the cranial area?

12 A Yes, sir.

13 Q All right. And, uh, we have what is depicted on
14 the screen as Exhibit No. 195?

15 A Yes, sir.

16 Q And, um, first of all, ex -- would you be so kind
17 as to explain the phrase postcranial findings?

18 A Postcranial simply means anything below the head or
19 the skull.

20 Q And in terms of, um, your examination of the
21 remains here, um, what other, uh, cran -- uh,
22 postcranial remains were identified to you as
23 coming from the burn pit behind Steven Avery's
24 garage?

25 A Virtually, um, every other bone in the body was

1 represented by at least one fragment, and in some --
2 in some cases, many more fragments. And what we see
3 depicted here on this graphic, um, are areas of the
4 body from which I was able to identify one or more
5 fragments, or entire bones, that could be
6 definitively, definitely, identified as to their
7 origin.

8 For example, the clavicle or collarbone,
9 or, um, the, um, metacarpals. The hand bone. Or
10 the vertebrae. Parts of the spine.

11 Q Are all the remains consistent with that of an
12 adult female?

13 A Not every bone in the body will allow you to make a
14 determination of age and/or sex, but the fragments
15 that were diagnostic or held that information for me
16 to look at, um, allowed me to confirm that these
17 remains, these fragmentary burned remains, were those
18 of an adult female.

19 Q All right. Now, um, I have just a few more
20 questions. During the course of your
21 examination, did you find evidence of, um, human
22 remains, um, obtained from an area other than
23 the, um, burn pit behind Steven Avery's garage?

24 A Yes, sir, I did.

25 Q Tell us about that, please?

1 A There was a second location, away from the burn pit,
2 uh, and closer to the, um -- what was then referred
3 to as the Janda -- Dassey/Janda property, uh, one of
4 four burn barrels contained, uh, human bone
5 fragments.

6 Q All right. And, uh, just for the benefit of the
7 jury, can you kind of tell us a little bit about
8 what kind of human bone fragments were recovered
9 from that area?

10 A Yes, sir. In, um, the burn barrel identified as Burn
11 Barrel No. 2, there were human -- burned human bone
12 fragments from the spine, from the shoulder blade, or
13 what we call the scapula, a possible hand bone
14 fragment, what we call a metacarpal, um, and
15 fragments of long bones that could have been, uh,
16 from leg bones or from arm bones.

17 Q I'm going to show you one, um, other exhibit
18 before we conclude. I'm going to direct your
19 attention to Exhibit -- I believe it's 150, and,
20 um, do you recognize that?

21 A Yes, sir, I do.

22 Q All right. And what is, um, Exhibit 150?

23 A One-five-zero is a portion of burned human bone, um,
24 that was recovered with other smaller burned human
25 bone fragments and fragments of dried or desiccated

1 human muscle tissue.

2 Q All right. And is this a -- a, um -- the
3 fragment that you caused to be, um, transferred
4 to the Crime Lab for DNA analysis?

5 A That is one of the fragments that I transferred to
6 the Federal Bureau of Investigation for DNA analysis.

7 Q Now, um, in fact, there was a -- a subsequent
8 attempted analysis on a number of the fragments
9 which you were unable to identify, am I correct?

10 A There were fragments that, um -- whose origin -- I --
11 I knew what bone they came from, uh, that were sent
12 to the FBI, uh, DNA Lab, but because of the extent of
13 burning to those bones, they were not, in my
14 knowledge, able to obtain, uh, a DNA signature.

15 Q But they did obtain a -- and the Crime Lab here
16 in Wisconsin did obtain a DNA analysis from some
17 of the fragments?

18 A I believe that's correct.

19 Q All right. All right, Doctor, to conclude, the
20 opinion that the remains were those of an adult
21 female less than 30 years of age, do you hold
22 that opinion to a reasonable degree of scientific
23 certainty?

24 A I would qualify that, to be consistent with my
25 report, to say the remains were those of someone who

1 is younger than 30 to 35 years of age. Correct.

2 Q All right. And the opinion that the internal
3 beveling observed in the left parietal bone is
4 characteristic of a gunshot or bullet entrance
5 wound, do you hold that opinion to a reasonable
6 degree of scientific certainty?

7 A Yes, I do. The unnatural defect in the left temporal
8 area of the skull, uh, is the result of a gunshot
9 injury.

10 Q Um, the opinion that the internal beveling ob --
11 observed in the occipital bone, left of the
12 midline, is characteristic of a gunshot or bullet
13 entrance wound, do you hold that opinion to a
14 reasonable degree of scientific certainty?

15 A Yes, sir, I do.

16 Q The opinion that the internal beveling, observed
17 in the left parietal bone and in the occipital
18 bone, occurred, um, before the burning episode?

19 A Yes.

20 Q Do you hold that opinion to a reasonable degree
21 of scientific certainty?

22 A Yes, sir, I do.

23 Q And, finally, your opinion that the manner of
24 death for this person was homicidal violence, do
25 you hold that opinion to a reasonable degree of

1 scientific certainty?

2 A Yes, sir, I do.

3 ATTORNEY FALLON: We'd, um, move into
4 evidence, um, the exhibits identified by Doctor
5 Eisenberg. I believe they are Exhibits, uh, 183
6 through 195, and Exhibit 199.

7 THE COURT: Counsel, any objection?

8 ATTORNEY FREMGEN: No.

9 ATTORNEY FALLON: Would tender the
10 witness for cross.

11 THE COURT: They're received. You may
12 cross.

13 CROSS-EXAMINATION

14 BY ATTORNEY FREMGEN:

15 Q Doctor, I just have a few questions for you. Um,
16 no questions about your qualifications. I wanted
17 to ask you about the box of items that were
18 provided to you to, uh, view. The box of bone
19 fragments. You recall that testimony earlier and
20 the picture of the box that you received to go
21 through?

22 A Yes, sir. That was the first of 50 containers, um,
23 that I received to, as you say, go through. It was
24 identified as Evidence Tag No. 8318. That's correct.

25 Q Okay. Now, the bones were all as the picture

1 depicted? That would be how you received it?

2 A No. At the time I received it, the box was closed

3 and sealed with evidence tape.

4 Q When you opened it, that's how you observed the

5 bones?

6 A Yes, sir.

7 Q They weren't individually packaged within the

8 box?

9 A No, sir.

10 Q Okay. Did you receive any individually packaged

11 bones along with that box?

12 A In that box, and as we all saw in that photo, there

13 was a clear plastic bag that contained, um, some

14 items that had been segregated from all of the items

15 that were collected in that box.

16 Q Now, you indicated that the manner of death was

17 homicidal violence? Specifically, gunshot;

18 correct?

19 A I -- In terms of my determination of manner of death,

20 yes, homicidal violence would be considered the

21 manner of death. There was evidence for two discrete

22 gunshot wounds, and, uh, the extreme fragmentation

23 and burning of the body, um, was part of the process

24 in my opinion.

25 Q In regards, specifically, to the two gunshot

1 wounds, based on beveling and the -- the two
2 skull fracture fragments you received? Correct?
3 That's where you came up with that determination
4 or opinion?

5 A That is correct, sir.

6 Q You were able to determine that -- from your
7 testimony, I understand it, that the -- those
8 skull, um, defects could not have occurred during
9 the burning process?

10 A That is correct.

11 Q Would have to have occurred prior to the burning
12 process?

13 A Yes, sir.

14 Q But would you agree there is no evidence, at
15 least from what you have testified to so far,
16 that indicates that the individual was alive at
17 the time of the two, uh, gunshot wounds?

18 A I cannot make that determination. That's not within
19 my field of expertise.

20 Q So when you say this is the manner of death, it's
21 more of a educated guesstimate versus an exact
22 determination?

23 A Well, I am not a medical doctor, sir, but based on my
24 experience, and having, um, examined other cases that
25 show these characteristic signatures of gunshot

1 wounds, um, it's my opinion that, um, it certainly
2 would have contributed to the cause of death.

3 Q If the person were alive prior to the gunshots --

4 A Yes, sir.

5 Q -- correct? Okay. Were you, um, present during
6 the second -- the burn -- The four burn barrels
7 you testified to, were you present during, uh,
8 the sifting of those burn barrels?

9 A To my knowledge, I was not. Although, uh, I would
10 like to -- to qualify that answer by saying that I
11 did have, uh, occasion, on two separate occasions, to
12 reexamine material that may have originated from any
13 one of those four burn barrels.

14 Q Okay. That's all. Thank you.

15 A Thank you, sir.

16 THE COURT: Any redirect, Counsel?

17 ATTORNEY FALLON: No redirect.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 ATTORNEY FALLON: I believe there's a,
22 uh, trial stipulation?

23 THE COURT: There is. There's an
24 additional trial stipulation. Ladies and gentlemen
25 of the jury, I remind you what I told you earlier

1 this morning about stipulations. They are evidence.
2 I'm going to read the following as a trial
3 stipulation:

4 Number one. Dr. Jeffrey Jentzen is the
5 Chief Medical Examiner for Milwaukee County,
6 Wisconsin, and is a board certified forensic
7 pathologist. Dr. Jentzen agreed to be a medical
8 consultant in this case and offered expert
9 opinion as to the manner and cause of death of
10 Teresa Halbach.

11 Number two. That if called to testify,
12 Dr. Jentzen would state that after consultation
13 with forensic anthropologist, Dr. Leslie
14 Eisenberg, he reviewed reports, photographs,
15 x-rays, bone fragments, and other materials
16 surrounding the Teresa Halbach death
17 investigation.

18 Dr. Jentzen would testify that in his
19 expert opinion, to a reasonable degree of medical
20 certainty, the manner of death of Teresa Halbach
21 was homicide, and the cause of death was gunshot
22 wounds to the head.

23 To the prosecution, is that your
24 stipulation?

25 ATTORNEY FALLON: It -- It is.

1 THE COURT: To the defense?

2 ATTORNEY FREMGEN: Yes.

3 THE COURT: It will be marked as

4 Exhibit --

5 (Exhibit No. 200 marked for identification.)

6 THE CLERK: Two hundred.

7 THE COURT: Exhibit No. 200. You have
8 an additional witness?

9 ATTORNEY FALLON: I -- I think we -- we
10 can start. We will not finish.

11 THE COURT: All right. Please start.

12 ATTORNEY FALLON: State at this time
13 would call Detective Anthony O'Neill. It may
14 take us a moment to set up.

15 THE COURT: That's fine. Just come here,
16 remain standing, and take the oath, please.

17 **ANTHONY O'NEILL,**

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: Anthony John O'Neill,
23 O'-N-e-i-l-l.

24 **DIRECT EXAMINATION**

25 BY ATTORNEY FALLON:

1 Q While we're, um -- While we're setting up here,
2 I'll ask some preliminary questions. For whom
3 are you employed, sir?

4 A The Marinette County Sheriff's Department.

5 Q And, um, how long have you been employed at the
6 Marinette County Sheriff's Department?

7 A Approximately 18 years.

8 Q And in what capacity are you currently employed?

9 A A detective.

10 Q And how long have you been a detective, sir?

11 A Since 1998.

12 Q And during your time as a detective, have you
13 been asked to interview both witnesses and
14 suspects in your capacity as a detective with the
15 Sheriff's Department?

16 A Yes, I have.

17 Q And, um, uh, during the course of your, uh, time
18 at the Marinette County Sheriff's Department,
19 have you participated in homicide investigations?

20 A Yes, I have.

21 Q Approximately how many investigations, uh --
22 homicide investigations have you been involved
23 in?

24 A I'd say about eight.

25 Q All right. And in terms of general investigative

1 experience, um, how -- how -- how many
2 investigations? Any reference?

3 A It's the bulk of my job.

4 Q Okay. Fair enough. Um, I'd like to direct your
5 attention to a particular day, and that would be,
6 Sunday, November 6, 2005, shortly before noon.
7 On that day, um, did you have occasion to assist
8 the Calumet County Sheriff's Department, and the
9 Wisconsin Department of Justice investigation
10 involving the missing person of Teresa Halbach?

11 A Yes, I did.

12 Q And, first of all, tell us how you became
13 involved?

14 A On the previous day, uh, our office was contacted by
15 the Calumet County Sheriff's Department and asked to
16 assist them in speaking to the Avery family. The
17 family maintains a property in Town of Stephenson in
18 Marinette County.

19 Uh, our understanding was that the Avery
20 family was at that property and, uh, Teresa
21 Halbach would have been at the Avery property in
22 Manitowoc County previous to coming up there, and
23 she was reported as a missing person.

24 Q All right. And, um, who, if anyone else, from
25 your Department was involved in assisting the

1 Department of Justice and Calumet County Sheriff?

2 A Primarily myself. Uh, Detective Todd Baldwin, uh,
3 Sergeant Michael Siegert (phonetic) and some patrol
4 officers as well.

5 Q All right. And, again, um, particularly with
6 respect to the, um, late morning, almost noon
7 hour, what role were you asked to, um, fulfill by
8 the Department of Justice and Calumet County
9 Sheriff?

10 A Uh, we had arrived at the Avery property a little
11 earlier in the day, and, uh, completed some of the
12 interviews that we started the day before. Um, we
13 were also, in preparation of an -- or anticipating a
14 search warrant for the, uh, two vehicles that were
15 located at the Avery property.

16 Q All right. Now, it might be of some help if you
17 kind of direct that microphone a little bit
18 closer to your -- your mouth, or maybe tip it up
19 a little, I guess.

20 A Okay. Is that better?

21 Q Yep. Yeah, that's better. Maybe the end -- Just
22 straighten the end out. There you go. That
23 should do it. All right. Um, what were you
24 asked to do?

25 A Um, we were asked to stand by the Avery property in

1 anticipation of a search warrant being completed.

2 Q All right. And what kind of, um -- What was

3 being -- What was the object of the search?

4 A Uh, the seizure of, uh, Steven Avery's Pontiac Grand

5 Am, I believe it was, and also the, uh, Avery Auto

6 Salvage flatbed towing vehicle that was at that

7 property in the town of Stephenson.

8 Q All right. And, um, who else, um, in addition to

9 members, of the Marinette Sheriff's Department,

10 uh, were present to assist in the execution of

11 the warrant?

12 A Uh, also with us was a Department of Justice special

13 agent, Kim Skorlinski.

14 Q All right. Uh, did there come a time where you

15 executed, um, the search warrant and seized the,

16 um, vehicle in question?

17 A Uh, yes. The vehicle actually left the premises with

18 two occupants and, uh, we subsequently stopped the

19 vehicle in anticipation of the search warrant and

20 seized the vehicle.

21 Q All right. And, um, who were the occupants of

22 the vehicle at the time of your seizure?

23 A Uh, the driver of the vehicle would have been, um,

24 Bryan Dassey, and the passenger would have been

25 Brendan Dassey.

1 Q All right. And the passenger, Brendan Dassey,
2 um, do you recognize him as being present in the
3 courtroom today?

4 A Uh, yes, I do.

5 Q And would you briefly point out where he is
6 seated for the benefit of, um, Court and jury?

7 A Uh, Mr. Dassey's seated to the left of your -- of me,
8 wearing a white, long-sleeved shirt, uh, pair of
9 glasses, dark-colored pants, and I believe a pair of
10 sneakers.

11 Q All right.

12 ATTORNEY FALLON: The record reflect the
13 witness has identified the accused?

14 THE COURT: So reflect.

15 Q (By Attorney Fallon) What happened when you
16 stopped the vehicle with the two, uh, passengers?
17 The defendant and his brother?

18 A When I approached the vehicle, I intro -- introduced
19 myself to the driver, and al, Mr. -- also,
20 Mr. Dassey. Um, stated for them we had a search
21 warrant for the vehicle, and that we needed them to
22 exit the vehicle, and that we would, uh, provide them
23 a ride back to the Avery property.

24 Q Now, at that particular point, did you, um,
25 decide to interview either one of the occupants

1 of the vehicle?

2 A Um, yes.

3 Q What did you do?

4 A Uh, I asked Mr. Dassey if he'd be willing to talk to
5 me in my vehicle, and he told me that he was not
6 under arrest, free to leave at anytime. And, uh --

7 ATTORNEY EDELSTEIN: Can we identify
8 which --

9 THE COURT: Right.

10 ATTORNEY FALLON: We'll get there.

11 THE COURT: Well, have him identify
12 which Mr. Dassey.

13 ATTORNEY FALLON: I was just about to do
14 that.

15 THE COURT: Okay.

16 Q (By Attorney Fallon) Um, since there are two
17 Dassey's here, if -- if you would refer to them
18 both by their first and last name, that would
19 help, okay?

20 A Yes.

21 Q Um, did you, um, interview either one or both of
22 them?

23 A I interviewed Brendan Dassey.

24 Q All right. And who, if anyone else, participated
25 in the interview of Brendan Dassey?

1 A Detective Todd Baldwin.

2 Q All right. And, um, while you were interviewing
3 Brendan Dassey, uh, what was going on with Bryan
4 Dassey, if you know?

5 A Uh, Bryan Dassey was being interviewed by Agent Skim
6 (sic) Skorlinski and his partner.

7 Q Um, where did the interview of the defendant,
8 Brendan Dassey, take place?

9 A In my unmarked police car.

10 Q All right. Now, um, during the course of, uh,
11 uh -- Well, let's ask it this way. Approximately
12 how long or how much time did you spend -- you
13 and/or Detective Baldwin spend -- interviewing,
14 uh, Brendan Dassey?

15 A I believe it was just over -- a little bit over an
16 hour.

17 Q And during the course of the interview, was
18 there, uh, free give and take between the
19 participants in the conversation?

20 A Uh, yes, there was.

21 Q All right. And at any point during the course of
22 your conversation, your interview of the
23 defendant, Brendan Dassey, did he ask you to,
24 um -- to leave?

25 A No.

1 Q All right. Did he ask or make any other requests
2 of you during the course of the interview that
3 you recall?

4 A No, he did not.

5 Q All right. Um, during the course of the
6 interview, did he refuse or decline to answer any
7 of your questions?

8 A No, he did not.

9 Q All right. Now, um, this interview, was it
10 recorded in any way?

11 A Yes, it was.

12 Q All right. Tell us about what recording device
13 and how that came to pass?

14 A Uh, in my car I have a digital audio recorder. It's
15 just a small pocket one. And, uh, uh, during the
16 interview, it was in the record position, and, uh,
17 once it was recorded, I, uh, archived it to our
18 department computer, and, uh, subsequently sent, um,
19 to the district attorney, a copy of that audio file.
20 Actually, two audio files.

21 Q All right. Now, um, let me ask you this: Where,
22 in the vehicle, was your recorder?

23 A It was in my visor. I have a visor caddy, so it's
24 placed up there.

25 Q All right. And, um, who sat in the, um -- the

1 front seat of the car?

2 A I sat in the driver's seat, Detective Baldwin in the
3 passenger front.

4 Q All right. And where did Mr. Dassey sit?

5 A Uh, Brendan sat in the back seat passenger side.

6 Q All right. Now, um, during the course of this,
7 was -- or -- did Mr. Dassey, um, audibly respond
8 to all of your questions?

9 A For the majority, yes, but he's a very much nonverbal
10 responder as well.

11 Q All right. So what type of nonverbal responses
12 or cues were you receiving from him during the
13 course of the interview?

14 A Uh, sometimes he'd go, um-hmm. In that sense, not an
15 affirmative, yes or no. Or a, ugh-ugh. And then,
16 uh, those were the responses that were outside, yes
17 or no, or any explanation, but then we also look at
18 nonverbal-type responses as well.

19 Q All right. And did you receive, um, uh, from
20 time to time, nonverbal responses during the
21 course of this?

22 A Uh, very much so.

23 Q All right. And, um, thus, the recording that,
24 uh, we're about to play does not, um, contain all
25 of the -- there's no know way of capturing the

1 nonverbal responses?

2 A That's correct.

3 Q All right. Um, during the course of this, um,
4 interview, did you promise Mr. Dassey anything in
5 an effort to get him to, um, talk to you?

6 A Not at all.

7 Q Very well.

8 ATTORNEY FALLON: Um, Your Honor, at
9 this time I guess we would, um, begin to play the
10 interview, recognizing that it -- it may go, and
11 will go, longer than 12:00. So do you have an
12 idea as to when you'd like us to -- Yeah. We do
13 have -- There is two parts to it, so we might be
14 able to take a break at the end of part one.

15 THE COURT: How long is part one?

16 ATTORNEY FALLON: Probably about a half
17 an hour.

18 THE COURT: Okay. Then let's do that.

19 ATTORNEY FALLON: All right.

20 THE COURT: Start the playing, and
21 we'll -- we'll cut out after part one.

22 ATTORNEY FALLON: Okay. Very well.

23 THE COURT: All right. Do you want this
24 taken by the re -- by the reporter?

25 ATTORNEY KRATZ: No. We actually have a

1 copy for the Court, Judge. I -- I don't have any
2 objection to --

3 THE COURT: I --

4 ATTORNEY KRATZ: -- the --

5 THE COURT: Counsel?

6 ATTORNEY KRATZ: -- reporter not taking
7 it.

8 ATTORNEY FREMGEN: Just one moment.

9 THE COURT: While they're talking, is
10 there a transcript as well?

11 ATTORNEY FALLON: I believe we have a --
12 this is a closed caption, so it will be a -- a
13 read-along or follow-along --

14 THE COURT: I -- I -- I understand that.
15 But is there a separate trans -- Has someone
16 transcribed this?

17 ATTORNEY KRATZ: We can check, Judge.

18 ATTORNEY EDELSTEIN: Your Honor, I don't
19 believe it would be necessary for the rep -- I
20 don't believe it would be necessary for the
21 reporter to, uh, take this portion down so long
22 as it consists solely of the audio, um, that this
23 witness has described, and we're not stopping and
24 starting for questions of the witness.

25 THE COURT: And -- and is that, uh --

1 Mr. Fallon, is that what you intend to do? To -- to
2 play this completely?

3 ATTORNEY FALLON: Yes. Yes. We're
4 going to play this one, uh, at least, um, I would
5 say, pretty much all the way through and then
6 we'll have some follow-up questions for Detective
7 O'Neill, and, perhaps, for Detective Baldwin, as
8 well, and tender them for cross. Um, Counsel is
9 providing me -- We do have a, um -- a typed
10 transcript that we could utilize as an exhibit,
11 or our preference was simply going to be to mark,
12 uh, the audio copy as the official record and --

13 THE COURT: All right.

14 ATTORNEY FALLON: -- use that as an
15 exhibit.

16 THE COURT: Any objection to doing that,
17 Counsel?

18 ATTORNEY EDELSTEIN: None.

19 THE COURT: Marking the audio copy?

20 ATTORNEY FREMGEN: That's fine.

21 THE COURT: Or the CD?

22 ATTORNEY FREMGEN: Right.

23 THE COURT: Okay. That, then, would be
24 Exhibit 201?

25 THE CLERK: It will. Um-hmm.

1 (Wherein CD is played.)

2 (Wherein CD is stopped.)

3 ATTORNEY EDELSTEIN: May we approach?

4 (Discussion off the record.)

5 THE COURT: All right. Proceed.

6 (Wherein playing of CD continues.)

7 THE COURT: Is that the first disk?

8 ATTORNEY FALLON: That's the first half,
9 or -- We're about halfway through, so it probably
10 would be a good time.

11 THE COURT: Sure. Uh, we'll break for
12 lunch. We'll be back here at 1:15. Ladies and
13 gentlemen, I'll remind you, don't talk about this
14 among yourselves or with anyone else. We'll see you
15 at 1:15.

16 (Recess had at 11:59 a.m.)

17 (Reconvened at 1:10 p.m.; jurors not
18 present.)

19 THE COURT: Before we have the jury back
20 here, it's my understanding, uh, Mr. Edelstein, that
21 you wish to put some matters on the record?

22 ATTORNEY EDELSTEIN: Yes, Your Honor.
23 Thank you. Um, not long after the last witness,
24 uh, Detective O'Neill, took the stand and the
25 Government started playing an audio of an

1 interview of November 6, 2005, we did have a
2 bench conference and, for the record, I'm asking
3 the Court to memorialize that. Um, we'd have an
4 objection to the visual display of the closed
5 captioning with the highlighting of the line
6 purportedly being broadcast, uh, through the
7 audio, being highlighted in a very bright yellow.

8 Um, as the Court I'm sure is aware, the
9 courtroom is set up with these monitors. I think
10 everybody could agree that the jury is pretty
11 much split down the middle, some looking to the
12 left, some looking to the right, in order to try
13 to follow along.

14 The only graphic on the screen is, in
15 fact, I believe a clock timer showing the
16 duration of the playing of the recording, as well
17 as the closed caption, if you will. But it does
18 contain the highlighted yellow portion.

19 It's, specifically, to the yellow
20 portion, that we object. I believe it places an
21 undue emphasis on the printed word as opposed to
22 the spoken word, which is really the place the
23 jury should be focusing, not on somebody else's
24 transcription of what they believe to be the
25 conversation to be.

1 And, for that reason, we have objected,
2 and do continue to object, to the yellow
3 highlighting. We have no objection to the
4 display of the rendition, um, particularly if the
5 Court were to give the instruction, I believe,
6 the parties have agreed upon.

7 THE COURT: Before I ask for a response
8 from you, Attorney Fallon, uh, I think what
9 Mr. Edelstein has said accurately summarizes his
10 objection raised at a bench conference. To put it
11 in a little context, uh, the yellow highlighter that
12 he is referring to, moves down the printed text that
13 appears on a screen, and, uh, it does -- excuse
14 me -- it did does so, uh, in a manner that -- that
15 follows in a -- in a rough way, in an approximate
16 way, the spoken, uh, matter that comes over the --
17 the audio portion of the, uh -- uh, of the tape.
18 Now, Mr. Fallon.

19 ATTORNEY FALLON: Yes. Thank you,
20 Judge. Um, I understand Counsel's concern, but,
21 um, I guess I have two practical responses. Um,
22 first and foremost, I don't believe -- and this
23 is, of course, a judgment call on the part of the
24 Court -- but, um, I don't believe that the
25 highlighting necessarily, um, overemphasizes the

1 particular line which is being broadcast or
2 spoken at that very moment.

3 In fact, the whole idea for the
4 captioning and the yellow line is to try as best
5 as possible to sync together the audio, uh,
6 words, with the written word, and, thus, make it
7 easier to follow, especially, I might add, in a
8 case where one of the participants in the
9 conversation is a very soft-spoken individual,
10 and there is some distance between that
11 individual and the recording device.

12 Um, so in that regard, I do not believe
13 that it overemphasizes this, because it's a
14 momentary thing, and as the yellow line, or
15 highlighter, or cursor, follows the conversation,
16 in -- in -- in that regard, so I don't think it's
17 an overemphasis.

18 Secondly, and, uh, equally important,
19 if -- or, if not, more so, is the fact that
20 there -- there is an in -- instruction that we've
21 agreed on. Um, Counsel has, uh, written it up,
22 Counsel for the defense, and -- and I would
23 encourage the Court, uh, to read the instruction,
24 uh, to the jury at each and every point that
25 we're going to play one of these, um, audio

1 recordings, whether they are closed captioned or
2 not, because the instruction is, and we're all --
3 I think all the attorneys are in agreement that
4 the law is that the jury must first rely and
5 trust the spoken word rather than the written
6 word, if there's some incongruence, and I -- I
7 think that would take care of the matter.

8 THE COURT: Presumably, what you have in
9 your hand is the instruction?

10 ATTORNEY FREMGEN: Yes.

11 THE COURT: Why don't you bring it up here.
12 All right. And Mr. Edelstein, you've agreed to this
13 instruction?

14 ATTORNEY FREMGEN: I actually drafted
15 the instruction, Judge.

16 THE COURT: Presumably, that means you
17 agree?

18 ATTORNEY FREMGEN: Yes, we do.

19 THE COURT: All right. All right. The
20 Court is going to find just, uh -- just as -- for
21 the record here, that the yellow highlighter, I
22 believe, to be an -- a -- an -- an assist to the
23 trier of fact in this case. That some portions of
24 the audio are, uh, seemingly, disjunctive in that
25 one of the participants is in the backseat of the

1 car, two of them are in the front seat of the car.
2 There -- there isn't, uh, perfect timing in doing
3 this.

4 The yellow highlighter, uh -- the yellow
5 highlighter brings to the -- the screen the
6 attention of the listener exactly what is being
7 said, and Court finds that to be an assist to the
8 jury, which is the trier of fact, without
9 depreciating from either the value or the nuance
10 of any of the -- or nuances of any of the words
11 that are -- are being spoken.

12 With that said, however, I will, uh, at
13 the, apparently, joint request of counsel, read
14 to the -- the jurors each time that we -- we
15 undertake either an audio or a audio visual, uh,
16 this particular instruction.

17 All right. Anything else before we
18 bring the jury back in?

19 ATTORNEY FALLON: No. Uh, I would
20 indicate that we'll be, uh, resuming with, uh,
21 Detective O'Neill. I will ask him, oh, probably
22 a half dozen or so questions right now just to
23 break things up, and then we'll play the balance
24 of, uh, this interview, and there'll be a few
25 more questions, and then Mr. Edel -- Edelstein

1 will cross.

2 THE COURT: All right. Detective, why
3 don't you come back up here. Let's get the jury
4 back in. I'll instruct them, and then you may
5 proceed.

6 ATTORNEY FALLON: Thank you.

7 THE COURT: You're welcome.

8 (Jurors in at 1:19 p.m.)

9 THE COURT: Be seated. We're set to
10 proceed this afternoon. Before we do, uh, ladies
11 and gentlemen, I've been asked, and have agreed, to
12 read this instruction to you.

13 Closed captioned transcripts have been
14 added to the audiotape that you're listening to.
15 If you believe in listening to the audio
16 concurrently while reading the closed captioned
17 words, that there is a variation between the
18 audio and the closed caption, you are to rely
19 solely on the audio. All right. You may begin.

20 ATTORNEY FALLON: Yes.

21 Q Before we begin with part two of the interview,
22 uh, Detective, I wonder if you could answer a
23 couple of questions and put things in perspective
24 for us? Um, first of all, a -- on November 6,
25 this interview is indicated during the noon hour,

1 um, there seems to be a -- a fair amount of, um,
2 in and out of the car by yourself and Detective
3 Baldwin. Can you explain to us what's going on?
4 A Uh, during the interview, I was conferring with, uh,
5 Special Investigator Skorlinski from the Department
6 of Justice, as he was also conferring with, uh,
7 agents that were in the Manitowoc area at the Avery
8 residence and the salvage yard.
9 Q And, at this time, uh, on November 6, how much
10 did you know in terms of the, uh, advancement, as
11 it were, of the investigative efforts?
12 A Um, not much more than what I knew the day before,
13 and that was very minimal as well.
14 Q All right. And what was that? I mean...
15 A Um, our initial request was for the assistance and
16 trying to obtain information from witnesses that had
17 last seen Teresa Halbach, which would have been the
18 Avery family, or particularly, Steven Avery, and
19 outside of that, uh, we were made aware that Teresa
20 Halbach's vehicle was found in the Avery Salvage Yard
21 on that Saturday, as well as, I think only that
22 Sunday, that there was a, uh -- or it was a Saturday,
23 a burn barrel that had been -- uh, some charred
24 pieces of electronics that were found inside of it as
25 well. I think that information was about the only

1 information that we had outside of Teresa Halbach
2 being missing.

3 Q All right. And so were these, um, entries and
4 exits of the vehicle are efforts on the depart of
5 you and Detective Baldwin to learn more of the
6 state of the investigation?

7 A Uh, yes. It was more of so to help clarify
8 information that we were either -- or receiving from
9 Brendan or, uh, not hearing.

10 Q All right. Now, um, there were, uh -- One point
11 here, um, there was a question that was asked of
12 you by the, um, defendant, Mr. Dassey, um, about
13 did he do it? Where did that come from?

14 A Um, I don't know. I mean, it came from Mr. Dassey,
15 and, uh, it was kind of confusing along the idea that
16 he talked about, uh, you know, do you think he raped
17 her? And, uh, up until that point there was never
18 even anything mentioned about any type of, uh, sexual
19 assault, or homicide, or kidnapping, or anything,
20 other than, uh, Teresa Halbach being at the Avery
21 property and missing.

22 Q All right. Very well. I think we'll, um,
23 continue with the presentation of the interview.

24 (Wherein playing of CD continues.)

25 (Wherein playing of CD ends.)

1 Q (By Attorney Fallon) Detective, O'Neill, where
2 were you when the -- the tape ends in terms of
3 physically?
4 A Uh, seated in the driver's side of my car.
5 Q All right. And where was your vehicle? Had
6 Brendan been returned yet to the family, uh,
7 residence up in Crivitz? Or were you still on
8 the roadside there?
9 A Still on the roadside, just getting to return him
10 back to there.
11 Q All right. And, um, after the interview was
12 completed where, uh, was Brendan taken?
13 A Uh, back to the cabin on the Avery property.
14 Q All right. And do you know, uh, who, um,
15 provided transportation for him?
16 A I believe I did.
17 Q All right. Uh, do you know who was, uh, present,
18 uh, uh, at the, uh, Avery property when you, uh,
19 dropped him off?
20 A I don't recall.
21 Q All right. Um, in terms of, um, this
22 investigation, did you have an opportunity to
23 speak with a -- a variety of -- of family people
24 up there?
25 A Yes, I did.

1 Q Generally, then, just who was there, uh, during
2 the days that you were assisting in this
3 investigation?

4 A Uh, Charles Avery, Steven Avery, uh, his father,
5 whose names escapes me. Uh, he -- that he refers to
6 as grandpa. Uh, his grandmother, uh, his brother,
7 Bryan, and I believe that's all I could recall.

8 Q All right. Now, first of all, tell us,
9 generally, about, um, Mr. Dassey's, uh, demeanor,
10 uh, during the course of your interview with him?
11 Looks like, according to the tape, about an hour
12 and twenty minutes total?

13 A Um, I interview a lot of people, and, uh,
14 Mr. Dassey's demeanor was, uh, different in that
15 during conversation he was almost to a point of
16 being, uh, engaged when he wanted to be and
17 disengaged when he didn't want to be. Just as what
18 I'm observing a lot today.

19 Q All right.

20 A Um, if it was a -- if it was something that we were
21 talking about that he was okay to talk about, he was
22 actively engaged. He'd tell you about it, bang,
23 bang, bang, and move on.

24 When it came to specifics regarding
25 Teresa Halbach, Steven Avery, what happened on

1 that day, he wasn't as engaged, and he went into
2 a inner struggle, physically. He'd sit there,
3 head down, withdrawn, motionless, answers would
4 be muffled. Uh, totally contrary to what he
5 chose to be involved with or engaged with.

6 It was his demeanor that I felt, from
7 all the years of training and experience I've had
8 with dealing with people, an inner struggle, a
9 conflict. He was hiding something. It was not
10 going be a ten-minute interview as to what he
11 saw. There was something more.

12 Q In speaking that, in terms of just, generally,
13 the -- the amount of information that you were
14 able to obtain from, um, Mr. Dassey, I mean,
15 ordinarily, how much -- if -- if someone was
16 freely to give that information, how long would
17 this interview have taken?

18 A From what, in totality, he had told -- he had told
19 us, or wanted us to believe, as far as his time in --
20 in being there, seeing Teresa Halbach, seeing
21 interaction between her and Steven Avery, it should
22 have taken us ten minutes.

23 Q All right. How long did the interview of, uh,
24 the other brother last?

25 A Not long at all. He was in and out of the car with

1 Agent Skorlinski, uh, way before, uh, Brendan.

2 Q All right. Now, there -- there was some
3 discussion about him being choked up, and
4 sweating, and things of that sort. Tell us about
5 that?

6 A Well, physically, you know, he even mentioned about
7 his eyes watering. I mean, we're all three sitting
8 in the car. It's November. And, of course, I got in
9 and out of the car a lot. But he's in the backseat
10 sweating like crazy, and I think even the other
11 officer noticed that as well.

12 Uh, his body posture, his body language.
13 Just as I'm sitting here with you today in the
14 openness. I mean, his was just totally
15 different. And, you know, from what I've seen in
16 my experience, it was that that would, uh,
17 suggest to me that there's something there.
18 Uh --

19 ATTORNEY FALLON: Your Honor, I believe
20 we've marked that, um, CD. Does -- Roberta, do
21 you have that?

22 THE CLERK: Yes.

23 ATTORNEY FALLON: That's Exhibit 201?

24 THE CLERK: Yep.

25 ATTORNEY FALLON: Uh, we would move into

1 evidence Exhibit 201. Uh, if the Court or
2 Counsel desires, we can provide a written
3 transcript to accompanying it, and maybe make it
4 208-A, if there's a need. But, otherwise, we
5 would move into evidence Exhibit 201 and tender
6 the witness for cross.

7 THE COURT: Uh, Counsel, any objection?
8 Other than that previously noted?

9 ATTORNEY EDELSTEIN: As to the
10 transcript, Your Honor, I would -- As to the
11 transcript, uh, I would at this time, uh, subject
12 to, perhaps, some agreed upon corrections, no
13 objection to the disk, itself.

14 THE COURT: All right.

15 ATTORNEY FALLON: That's fine.

16 THE COURT: Okay. It's received. Uh, you
17 may cross.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY EDELSTEIN:

20 Q Detective O'Neill, you spent about an hour and
21 twenty minutes with Brendan during the course of
22 this contact on the 6th of November; correct?

23 A I'd have to take a lot out of that from being in and
24 out of the car, but, in totality, myself, Detective
25 Baldwin, that's correct.

1 Q And Skorlinski was there as well?

2 A For about, I think, the last five minutes, if that

3 was about right.

4 Q All right. This had been some time back; right?

5 A Uh, November 6.

6 Q Of what year?

7 A Two-thousand five.

8 Q All right, 2005. It's a while back; right?

9 A Yes.

10 Q Before coming to testify today, did you have an

11 opportunity to discuss with anyone, um, the --

12 your testimony to help you be prepared for this

13 jury?

14 A Uh, I discussed with the attorneys, uh, that I read

15 the transcripts, uh, some of the points that they

16 asked me about in the transcripts. On the way down

17 here, I listened to both audio recordings. It's a

18 two-hour drive for me. Uh, tried to bring myself up

19 to speed, of course, because of the, uh -- the time,

20 and, uh, also other things and matters that we have

21 going on in Marinette County, yes.

22 Q I'm sorry? What about Marinette?

23 A Other things that we have going on. Other cases and

24 so forth. So I try to refresh myself with the

25 attorneys, as well as my own records. Uh, the

1 audios.

2 Q I don't want to get confused now. On the way --

3 are you talking about on the way down here you

4 talked with these attorneys about things

5 happening in Marinette?

6 A No. Outside of your question about if I had talked

7 to anybody about what I was going to say today?

8 Q Right.

9 A I mentioned I'd spoke to the attorneys today.

10 Q Right.

11 A And then, also, I reviewed my notes and the audio

12 recordings on the way down here.

13 Q Did you speak with any of the other officers who

14 were involved in the investigation in this

15 particular case?

16 A I believe I spoke to Detective Baldwin.

17 Q Did the, uh -- Did you and Baldwin come down

18 together?

19 A No, sir.

20 Q But you talked to Baldwin prior to testifying

21 here today?

22 A Yes.

23 Q Now, you knew that the girl's name, about whom

24 everyone was concerned, was Teresa Halbach;

25 right?

1 A Yes.

2 Q And you knew that the information was that the
3 last place she was seen was at the Avery Salvage
4 Yard; is that right?

5 A That's how it was reported. Yes.

6 Q And you knew the date that she was last there;
7 correct?

8 A Yes.

9 Q Prior to speaking with Brendan, had you spoken
10 with Steven Avery?

11 A Yes.

12 Q Charles Avery?

13 A Yes.

14 Q The grandfather?

15 A Yes.

16 Q Grandma?

17 A Yes.

18 Q And that was there at the cabin; right?

19 A Yes.

20 Q And that was actually the day before?

21 A For the most part, yes.

22 Q What do you mean the "most part"?

23 A I spoke to them -- Steven Avery on Sunday. I believe
24 I spoke to his dad on Sunday. His mom on Sunday, as
25 well. I mean, there were various people I spoke to

1 on both dates.

2 Q Okay. But you had been in and out of the -- the

3 cabin property a number of times over at least

4 two days?

5 A On two occasions. Yes.

6 Q Okay. Prior to talking with Brendan?

7 A Yes.

8 Q Brendan wasn't the first one you talked to?

9 A Correct.

10 Q And you were in contact with, uh, agents from

11 DCI; right?

12 A On a sporadic basis, yes.

13 Q Did you have daily contact over the course of the

14 two days with, uh, Skorlinski?

15 A I spoke to him a couple times. Maybe four.

16 Q Had -- How many times had you personally met with

17 Skorlinski before you spoke to Brendan?

18 A Twice.

19 Q And where was that?

20 A I believe he came up on Saturday night, and I would

21 have met him then, and then, also, on Sunday morning.

22 Q Prior to stopping the Pontiac and talking with

23 Brendan?

24 A Yes.

25 Q And the two of you, along with others, including,

1 uh, Baldwin, for example, you kind of laid the
2 game plan out as far as who was going to talk to
3 which of the boys; right?

4 A Um, it was spontaneous, but we decided that we'd talk
5 to them since we had the opportunity, yes.

6 Q All right. Well, the truth of the matter is, you
7 had the opportunity over at the cabin to talk to
8 him if you wanted to, didn't you?

9 A No.

10 Q And why was that?

11 A We were pretty busy, and we just didn't get to him.

12 Q You stopped the Pontiac on what day of the week?

13 A Sunday.

14 Q Okay. And what time did you do your last
15 interview on, um, the day before? On Saturday?

16 A It definitely was sunset.

17 Q It was a pretty important case, isn't it?

18 A Yes.

19 Q I don't mean to give you a hard time, but you can
20 work past sunset, can't you? You live in the
21 county? You know your way around?

22 A Well, what kind of case are you referring to at the
23 point that I was dealing with it, sir?

24 Q Well, on that Saturday night, you're working
25 with, uh, what you understand to be a, um --

1 certainly, at a very minimum, a missing persons
2 case; right?

3 A Uh, to my understanding and clarity that day it was a
4 missing person case, yes.

5 Q And was it important to make contact with
6 individuals who may have had the last contact
7 with this girl?

8 A Correct.

9 Q That's why you were there Saturday?

10 A Yes.

11 Q And you talked with a bunch of people that
12 Saturday, but you left out -- what you're telling
13 the jury, you left out about sunset?

14 A I believe so, yes.

15 Q Did you inquire on that Saturday as to the
16 whereabouts of Brendan when you were at the Avery
17 property?

18 A I'm sure I knew he was there.

19 Q Pard me?

20 A I'm sure I knew he was there.

21 Q So what stopped you from talking to him on
22 Saturday?

23 A Because up until the point of where we got on Sunday
24 there was no need to talk to him.

25 Q So you say up to a point on Sunday. What

1 happened between Saturday evening and Sunday?

2 A About 12 hours.

3 Q Well, can you be a little more specific? What

4 happened that caused you, besides the -- the

5 lapse of 12 hours time, that you deemed it

6 important at this point to talk with Brendan?

7 A Brendan was not the last person reported to see

8 Teresa Halbach. Let's --

9 Q Let me ask you this --

10 A -- start -- I'm trying to answer your question.

11 Q Okay. Go ahead.

12 A Okay? We talked to various people in the family, we

13 spoke -- spoke to family members, and, basically,

14 gave an order of importance, and Brendan came up on

15 Sunday.

16 Q When did you exactly learn that the bus driver

17 reported passing that area at roughly 3:45 on the

18 31st? You knew that on Saturday, didn't you?

19 A No, I did not.

20 Q When did you learn it?

21 A On Sunday when Agent Skorlinski and I conferred

22 outside the vehicle, uh, when Brendan was being

23 interviewed.

24 Q Now, you had -- What was your purpose in going

25 over there on Sunday?

1 A I believe, uh, the purpose was the search warrants
2 for the vehicles.

3 Q Okay. Besides learning from -- Was Brendan
4 already in your police vehicle when you learned
5 from Skorlinski that this information had been
6 developed about the bus driver?

7 A Yes.

8 Q Okay. And during the course of this hour and
9 twenty minutes, do you know when that was?

10 A I may, but I want to back up just, uh, two questions
11 before.

12 Q No. I -- I'd rather you answer my question. The
13 Government will get --

14 A Um --

15 Q -- their chance.

16 A I think it was about a third of the way into the
17 interview. I think it was pretty obvious, during the
18 audio part, where I got out of the vehicle, came back
19 and asked him the question about the, uh -- how many
20 people were on the bus, and the bus driver, and so
21 forth.

22 Q So you believe it was about the time you asked
23 him the question about the number of individuals
24 on the bus as far as the -- where that
25 information came to you during the course of the

1 hour and twenty minutes?

2 A Yes.

3 Q Now, Skorlinski is the one who actually made
4 application for and obtained the search warrant
5 for Steve Avery's Pontiac; right?

6 A I'd have to see a copy of the search warrant, but I
7 believe so.

8 Q Do you know when that occurred?

9 A The execution of the search warrant?

10 Q Correct.

11 A Uh, the seizure of the vehicle was on Sunday. I
12 don't know when I actually did the search of the
13 vehicles.

14 Q Okay. Do you know when Skorlinski actually got
15 the warrant?

16 ATTORNEY FALLON: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Uh, no, I do not.

19 Q (By Attorney Edelstein) But you know it was
20 before Sunday; correct?

21 A I don't recall.

22 Q Detective, obviously, you filed and prepared some
23 reports as a result of your activity in this
24 case; correct?

25 A Yes.

1 Q And you testified earlier that you had reviewed
2 some of your notes, uh, to help refresh your
3 memory for purposes of testifying?

4 A The transcript and the audio recordings I did.

5 Q Okay. I thought that -- I thought you said your
6 notes.

7 A I probably did, but it was a transcript and the audio
8 files. I don't recall that I actually looked at the
9 report, although I had a copy of it in my folder.

10 Q Did you look at any notes that you made of your
11 activities, which you would ordinarily make, to
12 help you prepare reports, for example?

13 A Not recently, no.

14 Q Would those notes indicate when you learned that
15 Skorlinski had obtained the search warrant for
16 the Pontiac automobile?

17 A I'd have to review the reports.

18 Q The report or your notes?

19 A I don't have notes. There's a report that I
20 produced.

21 Q Now, before -- Are you the one who actually
22 stopped the Pontiac automobile?

23 A No, I'm not.

24 Q Do you know who did?

25 A I believe Deputy Degnitz.

1 Q Okay. And what time was that?

2 COURT REPORTER: Could you spell his

3 last name, please?

4 THE WITNESS: D-e-g-n-i-t-z. Before

5 noon.

6 Q (By Attorney Edelstein) Can you be more

7 specific?

8 A I got there -- I think I re -- put down, like, 11:50,

9 so shortly before that. We were only maybe half a

10 mile away.

11 Q Okay. So if -- if your report says at about

12 11:55 a.m. you and Baldwin, uh, met with Degnitz

13 on Parkway, that would -- you wouldn't take issue

14 with that?

15 A After he made the stop we did. I don't -- I don't

16 know.

17 Q Okay. Had he already stopped the Pontiac?

18 A Yes.

19 Q And who's the one that directed him to stop the

20 Pontiac?

21 A I believe, uh, one of the officers. Either myself,

22 Detective Baldwin, or Agent Skorlinski.

23 Q And you don't remember if you were the one who --

24 This -- this is a deputy within your department;

25 right?

1 A Yes.

2 Q And you can't tell us who -- whether you have an
3 independent memory of telling one of your own
4 deputies in your department to stop a vehicle
5 where you have a search warrant?

6 ATTORNEY FALLON: Objection. Relevance.

7 THE COURT: I -- I'm going to sustain
8 that objection. Move on.

9 Q (By Attorney Edelstein) So to the best of your
10 recollection, was the vehicle stopped by the time
11 you got there?

12 A Yes.

13 Q And I believe you testified that you and Baldwin
14 took Brendan into your vehicle; right?

15 A We asked him if he would talk to us in my vehicle.
16 He said, yes.

17 Q What happened to his brother?

18 A He went and talked to Agent Skorlinski in his
19 vehicle.

20 Q Was it just Skorlinski over in his car?

21 A I think Skorlinski also had a partner. I -- Her name
22 escapes me. I only met her once.

23 Q Is that the one referred to in your report as
24 Deb, paren, unsure last name?

25 A I believe so. Yes.

1 Q Okay. Now, before you -- You had never met
2 Brendan; right?

3 A No.

4 Q Okay. Other than the fact that he was related,
5 perhaps, to Steven Avery or some of the other
6 members of the Avery family that you had visited
7 with the day before, you -- you didn't know
8 anything at all about him, did you?

9 A No.

10 Q Did you know how old he was?

11 A Uh, yes.

12 Q And where did you get that information?

13 A From him.

14 Q No. I'm talking about before you talked with
15 him?

16 A If I had it before I talked to him, perhaps from
17 Steven when he was telling me about who he come up
18 with and who there were -- who was all present,
19 perhaps.

20 Q Steven didn't tell you that he came up there in
21 the -- with his nephew accompanying him, did he?

22 A No.

23 Q You didn't know what grade he was in?

24 A I don't recall what grade he was in.

25 Q No. I'm asking you, did you know, prior to

1 making contact with him on Sunday, November 6,
2 what grade he was in?

3 A No.

4 Q You didn't know what school he went to, did you?

5 A No.

6 Q You had no idea whether you were dealing with
7 what we would -- what you might typically call an
8 average teenager or a teenager with any type of
9 limitations, is that a fair statement?

10 A Yes.

11 Q You had no idea about, uh, his ability -- what
12 his memory skills were, did you?

13 A Before our conversation, no.

14 Q Correct. You had no idea about his ability to
15 perceive and understand, um, language; correct?

16 A Before our conversation, no.

17 Q Okay. Is it fair to say that during the course
18 of your conversation with him, that you came to
19 the conclusion that, um, he did have some
20 difficulty sometimes understanding the question
21 that was being asked of him?

22 A No.

23 Q You don't agree with that?

24 A No, I don't.

25 Q Mr. Fallon asked you about his demeanor. You had

1 never been around this young man before, had you?

2 A No, I had not.

3 Q You had no idea what he acted like when he was

4 playing a video game, for example?

5 A No.

6 Q Had no idea what he acted like when he was

7 dealing, uh, with a teacher, for example?

8 A No.

9 Q You had no idea what he acted like when he was

10 dealing with a person like yourself? Of a -- an

11 authoritative figure?

12 A Prior to our conversation, no.

13 Q And you told him you were a police officer;

14 right?

15 A Yes.

16 Q Before he got into the police cruiser that you

17 were driving, which I guess is unmarked; right?

18 A It's a Ford Taurus like what any other person may

19 have in their garage.

20 Q Okay. There's no cage in the back?

21 A No.

22 Q All right. How much time elapsed from the time

23 of the stop until you got him into the backseat

24 of your Taurus?

25 A From the time that I arrived there?

1 Q Well, yes.

2 A Not much.

3 Q Ballpark?

4 A Couple minutes.

5 Q Okay. You had some conversation with him before

6 he got in there? I'm talking about the back of

7 your car.

8 A Other than introducing myself, asking him if he'd

9 like to come in --

10 Q Right.

11 A -- to talk to me in the car, that's about it.

12 Q Okay. So he agreed, sure, I'm going to come

13 over, and you guys direct him into the backseat?

14 You're in the front, Baldwin's on the passenger

15 side --

16 A Yes.

17 Q -- correct? Okay. And you've got this audio,

18 um, recorder -- digital audio recorder stuck, you

19 said, in a visor? Which one was it in? Right or

20 left?

21 A The visor caddy? In the driver's side visor.

22 Q Was it visible?

23 A Yes.

24 Q You didn't tell him it was there, did you?

25 A No.

1 Q You first asked him something to the effect, last
2 Monday, do you remember seeing this girl at all?
3 Did you have a photograph that you showed him?
4 A I believe we did. Yes.
5 Q What became of that photograph?
6 A I don't know. I think you'd have to ask Detective
7 Baldwin.
8 Q Did you get that from someone in Calumet County?
9 If you know.
10 A I don't know.
11 Q Is it fair to say that you, as well as Baldwin,
12 were not pleased with the answers you received to
13 some of your inquiries?
14 A I can't say that. Are you asking if his answers were
15 suspect? Yes.
16 Q Well, I assume if somebody gives you what you
17 consider to be a suspect answer, it's not going
18 to please you, is it?
19 A Well, the idea that someone gives me an answer, it's
20 not supposed to please me. I -- I just don't base it
21 on, does it please me or not.
22 Q Well --
23 A I mean, I don't --
24 Q -- as an --
25 A -- want to mince words, but --

1 THE COURT: One at a time.

2 THE WITNESS: I'm sorry.

3 Q (By Attorney Edelstein) As an investigator,
4 you're trying to get information?

5 A Correct.

6 Q And it's important to get the right information?

7 A Truthful information.

8 Q Well, if it's truthful, it would be right,
9 wouldn't it?

10 A If it pleases you.

11 Q Well, do you believe that untruthful information
12 is sometimes right?

13 A It may please some people.

14 Q I'm not asking about pleasure. I'm asking how
15 you perceived to be information. If it's
16 truthful, it's right; correct?

17 A Yes, I agree with that.

18 Q Okay. And if it's not truthful, it's not right?

19 A It doesn't please me.

20 Q It does not please you?

21 A No.

22 Q Very good. Thank you. And you believed you were
23 getting, at certain points during the course of
24 this hour and twenty minutes, what you believed
25 to be untruthful information; correct?

1 A Correct.

2 Q And that did not please you; correct?

3 A I took no pleasure.

4 Q Do you think your displeasure was evident to
5 Brendan?

6 ATTORNEY FALLON: Your Honor, I -- I'm
7 going to interpose an objection. The question is
8 not pleasure or displeasure. I -- I just object
9 to the characterization to the line of inquiry.
10 Uh, let's -- Eith -- Either it's information that
11 they thought suspect or not suspect and what they
12 did. That's what's relevant, not displeasure.

13 ATTORNEY EDELSTEIN: Your Honor, if I
14 might respond?

15 THE COURT: Go ahead.

16 ATTORNEY EDELSTEIN: This witness has
17 testified about the demeanor of the defendant.
18 Those are subjective characterizations that he
19 places upon reactions. I believe we are entitled
20 to inquire of this witness what actions he may
21 have taken, whether he showed displeasure, his
22 feelings, as that, obviously, may have affected
23 how the defendant reacted. This jury is entitled
24 to evaluate that for themselves.

25 THE COURT: Well --

1 ATTORNEY EDELSTEIN: I don't believe
2 that this is beyond the scope.

3 THE COURT: You -- You're now reaching
4 at -- at framing a question that seems to ask, do
5 you think he reacted in a way to a question you
6 might have asked, Detective, because you evinced
7 some displeasure? At least that's where I hear you
8 going, and I -- and I'm not -- I'm not sure that --
9 that, uh, this witness is competent to -- to be
10 making that evaluation -- that -- that substantive
11 evaluation about -- about the defendant.

12 Um, can you recast the question?

13 ATTORNEY EDELSTEIN: Let me try it this
14 way, Judge. Maybe we can save a little time.

15 Q (By Attorney Edelstein) Detective, I guess you
16 would agree with me that you -- you have no
17 degrees of any sort, education, or training,
18 which gives you any specific authoritative
19 ability to evaluate, um, why an individual may
20 react to you in the way they do? Is that a fair
21 statement? You're not a psychologist?

22 A I'm not a psychologist. That's correct.

23 Q And certainly not a child psychologist?

24 A I am not a child psychologist. That's correct.

25 Q Okay. How far into the interview that took about

1 an hour and twenty minutes, um, did you become
2 confrontational with Brendan?

3 A I wasn't confrontational with him.

4 ATTORNEY EDELSTEIN: May I approach,
5 Your Honor?

6 THE COURT: Go ahead.

7 Q (By Attorney Edelstein) Detective, if you would,
8 and ignore all the colorful marks on here, does
9 this look to be -- these two pages look to be --
10 or three pages, I'm sorry, look to be a copy of
11 the official supplemental report from the
12 Marinette County Sheriff's Office, Investigative
13 Division, that you prepared?

14 A Yes.

15 Q That's a yes?

16 A Yes.

17 Q Okay. And for reference numbers for the record,
18 it's Complaint 0-5-4-1-2-0; right?

19 A Correct.

20 Q And I'm making reference to page one of three
21 right now?

22 A Yes.

23 ATTORNEY FALLON: Would you guys just
24 talk into the mike just for our juror here?

25 Q (By Attorney Edelstein) If you would, take a

1 look at the first paragraph of page two of your
2 report and just read that to yourself. Does that
3 help you, uh -- If I asked you the same question
4 again about what time during the course of this
5 hour and twenty minutes you got confrontational,
6 would it change your answer?

7 A No.

8 Q Did you not write, when I confronted Brendan?

9 A Yes.

10 Q For the record, this has been marked as, uh,
11 Exhibit 202; is that right?

12 A Yes.

13 Q Is that --

14 A I think so.

15 Q This is the same report we were just talking
16 about?

17 A Uh, outside of the highlighting and circumstances,
18 yes.

19 Q Well, you wrote in that report that you
20 confronted Brendan; right?

21 A Confronted. Yes.

22 Q Is that different than my understanding of being
23 confrontational?

24 A Yes.

25 Q Help me out. Explain it to me. Explain it to

1 this jury.

2 A Confrontational is more a presence of mind and
3 demeanor. Confronted is questioning or, uh, having a
4 person explain. I confronted him about his answer.
5 I called him on it. I asked him about it. Why did
6 you tell me this when you said this?

7 Confrontational --

8 Q And which -- And which ---

9 THE COURT: Just -- Just a moment. He
10 was -- he was going to finish the answer. Allow him
11 to finish please. Go ahead.

12 THE WITNESS: Confrontational would
13 suggest the demeanor that I had when interviewing
14 Brendan, and that was not correct statement that
15 she had in asking why I was confrontational with
16 him when I was not confrontational with him.

17 COURT REPORTER: Can you -- I'm sorry.

18 THE COURT: Yeah. You --

19 COURT REPORTER: Would you slow down,
20 please? I'm having a hard time understanding
21 you.

22 THE WITNESS: I did not have a
23 confrontational conversation with Brendan Dassey.
24 I confronted him, or questioned him, or called
25 him on one of his answers that he gave that was

1 not consistent with what he was telling us
2 before.

3 Q (By Attorney Edelstein) And which answer was
4 that?

5 A Multiple. Uh, things -- Specific one that's related
6 to in the report was the, uh, school bus.

7 Q Were you present -- If -- If you know, who was
8 the first one to ask Brendan, if anyone, be it
9 you, Baldwin, or Skurlinski, whether or not he
10 remembered anybody taking photographs of the van?

11 A I believe it was me.

12 Q And you were present when Baldwin said, you
13 remember that girl taking that picture. You're
14 getting off the bus. It's a beautiful day. Were
15 you there when -- during that exchange?

16 A I believe that was me. Not Baldwin, was it?

17 Q Well, in any event, you remember it; right?

18 A Yes.

19 Q Okay. You're getting off the bus. It's a
20 beautiful day. It's daylight. And everybody
21 sees her, comma, you do, too. Did you mean to
22 suggest to him that these are facts that he
23 should affirm by the way you asked that question?

24 A I'd have to see it in its full context, because I
25 know a couple times I asked him about seeing her on

1 the bus, and that may have been a reaffirming
2 question to him. I'm not certain as to where it is
3 in the transcript.

4 Q I think you told us already that you did have a
5 chance to review the transcript from the audio?

6 A Yes.

7 Q Okay. Can you take a look at what I have in
8 front of you here? Does this look to be a copy
9 of that transcript?

10 A Yes.

11 Q Okay. Directing your attention to page 17 at the
12 bottom where it's indicated, Detective Baldwin,
13 yeah, you remember that girl. That portion? You
14 thought maybe you said that? But if this
15 indicates Baldwin, do you have any problem with
16 it? Do you remember who said it?

17 A From the area you're representing inside the
18 transcript, uh, Detective Baldwin.

19 Q Okay. And would you agree with me that this is
20 really the first time, during the course of the
21 conversation, where somebody suggests to him the
22 girl's taking pictures?

23 A Could you repeat the question, please?

24 Q You had asked him about taking the pictures
25 earlier?

1 A Yes.

2 Q Okay. And you were the first one who brought
3 that up?

4 A Yes.

5 Q Okay. Then there was some follow-up by Baldwin;
6 right?

7 A By myself and then Baldwin.

8 Q Okay. But during the time that you first brought
9 it up -- Or, I'm sorry. That -- Yeah, that you
10 first brought it up, and then when Baldwin
11 brought it up, the question being, from yourself,
12 the girl taking pictures. You remember that.
13 Okay. Would you agree that that's how it was
14 asked?

15 A After the initial one, yes.

16 Q And you asked him in that fashion?

17 A After the initial -- initial affirmation by Dassey
18 that he did see the girl taking pictures, that next
19 inquiry was what you said.

20 Q You indicated after his initial affirmation that
21 he saw the girl taking pictures. Help me out and
22 show me where that is -- precedes that in the
23 transcript?

24 ATTORNEY FALLON: Are we still on page
25 17, gentlemen?

1 ATTORNEY EDELSTEIN: Yeah.

2 A Okay. Baldwin's comments were after my initial

3 asking him about the girl taking pictures.

4 Q (By Attorney Edelstein) All right. So you were

5 incorrect when you said it was after his initial

6 affirmation of seeing the girl take pictures?

7 A That's correct.

8 Q Okay. Well, nobody's perfect. We all make

9 mistakes. Won't hold that against you. So

10 you're the first one that really brought it up?

11 A Yes.

12 Q Okay. As long as I'm here, so I don't have to

13 chase back and forth, between the first time you

14 brought it up, you make the statement that's --

15 it's not on -- not everyday somebody's taking

16 pictures of a van; right?

17 A Correct.

18 Q The question then becomes, how many people are on

19 the bus?

20 A Correct.

21 Q He answers the question; right?

22 A Correct.

23 Q The next question, as far as taking pictures,

24 comes from you. The girl taking pictures. You

25 remember that. Right?

1 A Correct.

2 Q Okay. He says, well, I wasn't looking at. And

3 then it looks like he was interrupted; right?

4 A Uh --

5 ATTORNEY FALLON: I -- I would object to

6 that characterization. I think the, uh, tape,

7 itself, will speak another explanation.

8 THE COURT: Yeah. The -- the tape is

9 the -- is the best evidence here. I'll sustain the

10 objection.

11 ATTORNEY EDELSTEIN: That's fine.

12 Q (By Attorney Edelstein) In -- in any event,

13 there's no answer to that? He does not affirm or

14 deny what you're asserting; correct?

15 A According to the transcript, the written part, there

16 is no specific answer to it.

17 Q And if this is based upon the video everybody

18 just saw, and you com -- I -- did -- had -- did

19 you ever personally compare this to the -- to the

20 audio?

21 A Yes.

22 Q And it's accurate?

23 A To a point it can be, yes.

24 Q But he never either affirmed or denied what you

25 first suggested to him about the girl taking the

1 pictures?

2 A He does state that they -- he saw the girl taking
3 pictures.

4 Q Not until it's brought up again, especially in
5 this ex -- right in this little exchange, next,
6 not by yourself, but by Baldwin?

7 A Yes.

8 Q And his answer was, maybe. I don't know. Right?

9 A Initial copy, yes.

10 Q And that's when Baldwin said, Brendan, come on,
11 as if to suggest that Brendan was withholding
12 something?

13 A My opinion?

14 Q Yes, sir.

15 A Perhaps.

16 Q If you're disappointed about something,
17 Detective, would you be displeased?

18 ATTORNEY FALLON: Objection. Relevance.

19 THE COURT: That's sustained.

20 Q (By Attorney Edelstein) Did you not --

21 ATTORNEY FALLON: As to the form
22 anyways.

23 Q (By Attorney Edelstein) You told him, did you
24 not, Brendan, and I quote, you're not going to
25 disappoint us. Do you remember telling him that?

1 A Yes.

2 Q Do you remember asking him, did you see her
3 standing there taking a picture?

4 ATTORNEY EDELSTEIN: Counsel, I'm on
5 page 18.

6 Q (By Attorney Edelstein) And he -- he did answer,
7 yeah?

8 A Yes.

9 Q And then you -- did you immediately thereafter
10 ask him -- and if -- if you don't remember, I'll
11 come back, but did you ask him, why didn't you
12 tell me that?

13 A I'm going to save you a trip. Yes.

14 Q And you suggested to him the reason that he,
15 perhaps, didn't tell you that, was that he was
16 scared? Because you phrased it as, are you
17 scared? Right?

18 A I'm not sure if it was in response to him saying he
19 was afraid or if, by itself, I just said, are you
20 scared?

21 Q Is there some reason you didn't offer up as an
22 explanation for his failure or inability to
23 answer your earlier question that, perhaps, he
24 has a bad memory?

25 A I didn't have that opinion.

1 Q You didn't know anything about him other than the
2 brief contact you had that morning; correct?

3 A Uh, nothing before our conversation to suggest to me
4 that he had a bad memory.

5 Q All right.

6 ATTORNEY FREMGEN: Just one moment,
7 Judge.

8 THE COURT: Okay.

9 ATTORNEY FREMGEN: Judge, if I may, it's
10 3:00. I believe Mr. Edelstein still has some
11 significant amount of cross, and the State will
12 have a couple of questions. Court want to take a
13 break?

14 THE COURT: Sure. Uh, we'll break until
15 3:20.

16 (Recess had at 3:03 p.m.)

17 (Reconvened at 3:27 p.m.)

18 THE COURT: Counsel, you may resume.

19 ATTORNEY EDELSTEIN: Thank you.

20 Q (By Attorney Edelstein) Detective O'Neill,
21 during the course of one hour and twenty minutes,
22 roughly, would you agree or disagree with me that
23 both, yourself, as well as Skorlinski and
24 Baldwin, told Brendan that you believed that he
25 was being told what to say?

1 A We brought that up, yes.

2 Q All right. And when you say you brought it up,
3 you, basically, flat out told him, you're being
4 told what to say. Right? If -- if it'll help
5 speed it along, Detective, I think that
6 Mr. Fallon brought over --

7 A It was brought up. That's correct.

8 Q What's been marked as 203, does that look to be a
9 copy of the transcript that we were looking at
10 before?

11 A Yes, it is.

12 Q Same one that you compared to the audio?

13 A Yes.

14 Q And best you know, that's accurate?

15 A Yes.

16 Q Can you tell this jury how many times between
17 you, Skorlinski, and Baldwin that that assertion
18 was presented -- sor -- to Brendan?

19 A I believe we asked him, uh, at least two, probably
20 three, times, uh, whether or not he was told to say
21 something.

22 Q Okay. Can you tell this jury how many times
23 during the course of an hour and twenty minutes
24 interview that you had with Brendan that lies
25 were told to him by either you, Skorlinski, or

1 Baldwin?

2 A No lies.

3 Q Would you turn to page 33, please? Toward the

4 bottom of that, uh, specifically, Detective

5 Baldwin, the statement is made to Brendan, quote,

6 she needs medicine -- medicines on a daily basis,

7 okay? Do you see where I'm talking about?

8 A Yes, I do.

9 Q It's not true, was it?

10 A It's standard deception practice used by

11 investigators.

12 Q Okay. Well, I don't want to go down the please,

13 displease rows again, but can you tell me the

14 difference between standard -- That what you

15 said? Standard deception practices and a lie?

16 A I didn't say lie. Deceptive practices that we may

17 utilize as far as what responses we get from the

18 question.

19 Q Would you agree with me that a lie is something

20 that's not true?

21 A If there's a benefit gained that's ill will, yes.

22 Q I'm sorry. Could you repeat your answer?

23 A If you could repeat your question?

24 Q Okay.

25 A I'm sorry, I just -- You're asking about a lie and if

1 this was a lie?

2 Q I'm trying to understand whether -- when you used
3 the phrase "deceptive practices" --

4 A Um-hmm.

5 Q -- whether -- Let me ask it this way. In your
6 business, does a deceptive practice contain
7 intentionally false information that is conveyed
8 to another person?

9 A It's allowable to use some trickery and deceit.

10 Q I'm not asking what's allowable. I'm asking what
11 it is?

12 A Something in the idea of what we had asked him
13 concerning the medications that she would need. Yes.

14 THE COURT: You -- you're not answering the
15 question, Detective. Would you reask it, please?

16 Q (By Attorney Edelstein) Did -- Did you
17 understand my question?

18 A If you're asking me if I lied -- or if Detective
19 Baldwin lied to him, I'd say no.

20 Q All right. When the statement was made to
21 Brendan, quote, she needs medicine on a daily
22 basis, you acknowledge that the statement was
23 made; correct?

24 A Correct.

25 Q And you acknowledge, also, that when it was made,

1 neither you nor Baldwin had any basis for
2 believing that that was a true statement; isn't
3 that also correct?

4 A True.

5 Q All right. You, Baldwin, and Skorlinski implored
6 him to tell you the truth; correct?

7 A Yes.

8 Q In addition to the deceptive practice, lie,
9 misrepresentation, however you want to
10 characterize it, about the medicine, it was also
11 suggested to Brendan, in a similar fashion, that
12 his brother was looking out the kitchen window.
13 Do you recall that?

14 THE COURT: Do you have a page for that?

15 ATTORNEY EDELSTEIN: I'll have to find
16 it, Judge. I know it's in here.

17 Q (By Attorney Edelstein) Page 30, please? You
18 see at the bottom there, Detective, uh, by
19 Baldwin, you and your brother both? It's the
20 third entry from the bottom.

21 A I see it.

22 Q Okay. It recites, you and your brother both sat
23 there and looked out the window at her. Right?

24 A Yes.

25 Q You and -- You had no basis for believing that to

1 be true, did you?

2 A I didn't make that statement.

3 Q Well --

4 A I can't say for that statement.

5 Q All right. You were in and out of the vehicle

6 during this hour and twenty minutes; right?

7 A Yes.

8 Q Um, it was November. Do you remember what the

9 temperature was that day?

10 A It was cool.

11 Q Give me a range. If -- if you don't remember,

12 that's fine.

13 A I would say close to 35 to 40.

14 Q All right. Was the heater on in your vehicle?

15 A I don't recall.

16 Q Do you remember if Baldwin turned it off because

17 Brendan asked him to? Or turned it down?

18 A Not while I was in the vehicle.

19 Q Okay. So if it happened, it might have happened

20 when you were out talking to Skorlinski?

21 A It may have. I don't --

22 Q Okay. When you got out, that's what you were

23 doing, weren't you? You were going back to talk

24 to Skorlinski?

25 A For the most part, yes.

1 Q And you were sort of reporting into Skorlinski
2 what the progress was as far as, uh, gaining any
3 information from Brendan; right?

4 A Sometimes. Yes.

5 Q All right. Do you know how many times that you
6 told Brendan that he was not telling the truth?

7 A No.

8 Q But you acknowledge that it happened on multiple
9 occasions during the course of this hour and
10 twenty minutes; right?

11 A It may have. Yes.

12 Q Well -- Now, you testified on direct that I think
13 when Mr. Fallon first started having you explain
14 your involvement in this matter, I believe you
15 said the information that you had was minimal.
16 Do you remember that testimony?

17 A Yes.

18 Q Okay. Um, but, actually, you had certainly not
19 every piece of information but you knew more than
20 just name, rank, and serial number, so to speak,
21 didn't you? You had some very --

22 ATTORNEY FALLON: Objection.

23 Q (By Attorney Edelstein) -- specific details?

24 ATTORNEY FALLON: Name, rank and serial
25 number is -- is vague.

1 ATTORNEY EDELSTEIN: All right. That's
2 fine.

3 THE COURT: Rephrase that, please.

4 Q (By Attorney Edelstein) For example, Detective,
5 you knew that a vehicle had been found on the
6 Avery property?

7 A Yes.

8 Q And you knew that that vehicle, uh, had been
9 checked by a registration, and VIN, and all that,
10 and that it was Teresa Halbach's?

11 A There was presumptive that it was. Yes.

12 Q Okay. So you -- you presumed that that was, in
13 fact, the case?

14 A (No verbal response.)

15 Q All right. And, in addition to that, you also
16 knew that, uh, the vehicle had been, in some
17 respect, uh, apparently, concealed?

18 A Yes.

19 Q Okay. You knew that Teresa Halbach worked as a
20 freelance photographer; correct?

21 A Yes.

22 Q You knew that she worked, uh, with the *AutoTrader*
23 *Magazine*.

24 A Yes.

25 Q You knew that she had, uh, been at the Avery

1 property, or was scheduled to be at the Avery
2 property, on the 31st of October?

3 A Yes.

4 Q You knew a bus driver had reported seeing her at
5 the Avery property on the 31st of October?

6 A That Sunday. Yes.

7 Q Any other particular details that you may have
8 known where we can judge whether your answer on
9 the minimal is a good one or a bad one?

10 ATTORNEY FALLON: Objection.
11 Argumentative.

12 THE COURT: Uh, sustained.

13 Q (By Attorney Edelstein) You testified -- If
14 you'll bear with -- with me a second, I need to
15 find this in the transcript. You testified that
16 you made no sort of promises to him; right? Do
17 you recall that?

18 A No.

19 Q Did you make any promises to him?

20 A No.

21 Q All right. Detective, just so I don't have to go
22 through each individual present, did -- did you,
23 or either Skorlinski or Baldwin, in your
24 presence, make any promises to Brendan?

25 A Outside telling him he was free to leave, no.

1 Q Didn't someone tell him that, um, no matter what
2 he said, or something to that effect, that he was
3 not going to jail?

4 A He brought up the idea that he was afraid that we'd
5 take him to jail. I remember that.

6 Q All right. Directing your attention to page 36.
7 At the bottom. Four lines up.

8 A Um-hmm.

9 Q You said, okay, why did you not tell us the truth
10 about when you saw her leaving? Answer: I was
11 scared. Right?

12 A Correct.

13 Q Is there some reason -- Well, if -- What was the
14 very next thing that you said in response to his
15 assertion he was scared?

16 A Okay. Let's get beyond being scared.

17 Q All right.

18 A Continue?

19 Q Let me stop you right there. So you wanted to
20 get beyond this issue of being scared. Is there
21 some reason you didn't explore that more if your
22 goal is to gather as much information to get to
23 the truth of what happened? Why it happened?
24 Who did what?

25 A I did.

1 Q Why did you tell him, then, okay, let's get
2 beyond being scared?

3 A Because we had to deal with that part of it.

4 Q With what? I'm sorry.

5 A We had to deal with his fear. That part if he was
6 scared about something. Let's get beyond being
7 scared.

8 Q Well, I take that to mean that -- Let me ask you
9 this: Isn't it true that during the course of
10 the hour -- hour and twenty minutes, despite him
11 saying several times he was scared, you,
12 Skorlinski, or Baldwin never really inquired any
13 further about that? What were you scared of?
14 Why were you scared? When did you become scared?
15 You never -- You guys never had -- went into
16 that, did you?

17 A I think it was covered several times in the audio.
18 What are you afraid of, Brendan? I -- I think I
19 remember those words, specifically.

20 Q All right. Well --

21 A I think --

22 Q Maybe we'll find that in a second. I don't want
23 to get off 36, though, but let's go back to this
24 issue of promises. At the second to the last
25 entry on that page, Detective, right after

1 getting past being scared, um, what does -- you
2 told him, in fact, um, get beyond the idea of
3 getting in trouble and going to jail because
4 that's not going to happen. That's what you told
5 him; right?

6 A Correct.

7 Q Isn't that a promise? Aren't you promising him
8 that he's not going to jail?

9 A I told him he didn't have to talk to me and he was
10 free to leave. There was no --

11 Q Doesn't answer my question. Did you tell him he
12 wasn't -- that -- quote, going to jail because
13 that's not going to happen? Did you or did you
14 not tell him that?

15 A Yes.

16 Q Do you construe that as a promise to him?

17 A No.

18 Q Is it fair to say that during the course of the
19 interview, that you or the others suggest to him,
20 uh, potential reasons why Teresa could be
21 missing? For example, an accident?

22 A Yes.

23 Q Is it fair to say that during the course of the
24 interviews, that you, Skorlinski, or Baldwin
25 suggested to him alternatives, uh, such as

1 mistake?

2 A Yes.

3 Q Did you probe into Brendan when he indicated that
4 sometimes he gets shy when he's talking to people
5 he doesn't know?

6 A At the end of the interview? No.

7 Q Would it be fair to -- to characterize that --
8 during the course of the interview, that the
9 three of you, at various times, attempted to
10 increase the emotional feeling of guilt in the
11 mind of Brendan Dassey?

12 A I apologize, but would you repeat that?

13 Q Would you agree or disagree with me that during
14 the course of the hour and twenty minutes that
15 you, Baldwin, Skorkinski spent with Brendan
16 Dassey, that there was a conscious effort to
17 increase in his mind his belief and feeling of
18 guilt?

19 A No.

20 Q Could you go to page 40?

21 A Forty?

22 Q Yes, please. Fifth entry from the bottom? You
23 were there, and Baldwin said as follows: You
24 feel guilty right now that you didn't help that
25 girl. Correct? You see where I'm talking about?

1 A I see.

2 Q I see the glasses you got during the break.

3 A I see it.

4 Q In fact, the very next statement made by an
5 officer, and I'm just jumping down two lines
6 there, again, as Baldwin, where he says, I can
7 see in your eyes that you feel terrible about
8 something. Right?

9 A Yes.

10 Q Is that not a -- Did -- Did you and Skorlinski
11 ever discuss, uh, how you might appeal to or
12 cause Brendan to think that he was guilty of
13 something in order to try to get some
14 information?

15 A No.

16 Q Now, you indicated you made no notes at the time
17 of the interview; correct?

18 A Correct.

19 Q You produced, uh, the supplement report that we
20 talked about, uh, sometime after that; right?

21 A Yes.

22 Q So if it was dated 11/11, about five days later?

23 A Yes.

24 Q Okay. And you didn't use your handy dandy little
25 digital recorder that you had up on the visor to

1 make notes of this interaction with Brendan on
2 the way back to either, uh, your home, or
3 wherever you left when you did leave, uh, to help
4 you prepare the report; right?

5 A No.

6 Q So you're having to rely entirely upon your
7 memory when you described his demeanor; correct?

8 A Yes.

9 Q Okay. And that's about 16 months ago; right?

10 A Yes.

11 Q Okay. But you acknowledge there's nothing at all
12 in your report about his demeanor?

13 A No.

14 Q Isn't it true that the first individual to state
15 or suggest that Teresa Halbach went into the
16 Steve Avery trailer was a police officer, as far
17 as your interactions with Brendan on this date?

18 A Yes.

19 Q Okay. So it's not something that he came up with
20 in response to a question, that, well, for
21 example, I saw her when I got off the bus and I
22 saw her go into the house?

23 A Correct.

24 Q Okay. That notion or that concept was promoted
25 to him, uh, somewhat of a theme throughout this

1 interview, wasn't it?

2 A No.

3 Q You don't agree with that?

4 A No.

5 Q All right. But you acknowledge that it was a
6 police officer who first brought that alleged
7 fact up?

8 A Brought the question to him.

9 Q Okay. In fact, it happened more than once,
10 didn't it? That very notion that she went into
11 the trailer?

12 A I believe the question was brought through more than
13 once. Yes.

14 Q Do you understand the difference between an
15 open-ended question and a leading question, don't
16 you?

17 A Yes.

18 Q Every time that that concept was brought up,
19 i.e., she went into the trailer, it was done in a
20 leading and suggestive fashion; agree or
21 disagree?

22 ATTORNEY FALLON: I'm going to object to
23 that question. It's, um, vague as asked.
24 There's a specific legal definition for a leading
25 question under the **Sarinske** case, and then

1 there's a whole psychological concept. So I -- I
2 don't know what we're doing here, but I --

3 THE COURT: Well, you're objecting --
4 You -- You're objecting to the foundation, I -- I
5 take it, and -- and --

6 ATTORNEY FALLON: Foundation and the
7 manner --

8 ATTORNEY EDELSTEIN: I can --

9 ATTORNEY FALLON: -- in which the
10 question is asked.

11 THE COURT: All right. Objection is
12 sustained.

13 ATTORNEY EDELSTEIN: Just let me do it
14 this way.

15 Q (By Attorney Edelstein) When you're conducting
16 an interview, you oftentimes lead the
17 interviewee; correct? Know what I'm saying,
18 don't you?

19 A Well, I believe I do, except that, as Mr. Fallon
20 suggested and brought forward, your definition and
21 mine is different.

22 Q Pard me?

23 A Your -- your perception of leading question and what
24 I may use as a question is different.

25 Q If a question suggests the answer, do you think

1 it's leading?

2 A Yes.

3 Q During the course of the contact with Brendan,
4 when he was questioned, if he's asked the
5 question, and I make reference, for example, to
6 page 31, about halfway down, Brendan, she went
7 into that trailer, didn't she? Is that a leading
8 question or is it not a leading question?

9 A Yes.

10 Q It is a leading question?

11 A Yes.

12 Q Correct?

13 A Um-hmm.

14 Q All right. That's all for now. Thank you.

15 THE COURT: Any redirect, Counsel?

16 ATTORNEY FALLON: Yes, a few questions.

17 Thank you.

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q Counsel asked you about promises, inducements.
21 For you, as a detective, did you make any
22 promises or inducements to Mr. Dassey in order to
23 get him to speak with you?

24 A Not at all.

25 Q All right. And, now, is that the concept of

1 promise that you had in your mind in response to
2 Counsel's question on promises?

3 A No, it is not.

4 Q No, I mean the concept. When he asked you about
5 promises, you said you made no promises. Is that
6 what you meant when you said, no, we didn't make
7 any promises?

8 ATTORNEY EDELSTEIN: Asked and answered
9 and suggestive, Your Honor.

10 ATTORNEY FALLON: He's clarifying --
11 First of all, under 906.11 (c), a leading
12 question in redirect examination to clarify a
13 point -- clarify a point on cross-examination is
14 permitted.

15 Number two, this witness clearly has
16 just indicated he was uncertain as to the nature
17 of my question, and I'm attempting to restructure
18 and direct it.

19 THE COURT: That's fair. Uh, you may ask
20 the question in that -- in that fashion.

21 Q (By Attorney Fallon) Do you understand?

22 A I'm trying to. I believe that, uh, got a little
23 confused with what he was trying to explain before,
24 my difference of it, and I'll try to get back on
25 track as to what my reason was. Go ahead, sir.

1 Q All right. When he was asking you what a promise
2 is, what did you understand him to mean? Let's
3 get at it that way.

4 A Uh, promises that I wouldn't do this in exchange for
5 that.

6 Q All right. Now, you did make promises to him
7 during the interview? For instance, you promised
8 to take him home?

9 A Correct.

10 Q All right. And you said he could leave if he
11 wanted to?

12 A Correct.

13 Q All right. Now, let's talk a little bit about,
14 um, the statement, uh, the deceptive practice,
15 regarding the need for medical attention. You
16 indicated that that was a common practice in a
17 missing persons case. Tell us about that?

18 A It's probative-type questions.

19 Q What do you hope to gain? I mean, what's the
20 idea behind suggesting that somebody may have a
21 medical need when you're trying to locate -- Why
22 do you ask that?

23 A Being probative. If his answers would have been
24 something to the effect, well, I think I could help
25 her, or, I really want to see her get medication, or,

1 I don't think she needs it now. It give us an idea.
2 You know, trying to determine as to whether or not,
3 is she alive? Is she injured? Is she not?
4 Q All right. Would it be fair to say you were
5 appealing to a sense of emotion on the part of a
6 person?
7 A Probing into that venue, yes.
8 Q Um, Counsel also asked, um, about you -- your
9 efforts, and Detective Baldwin's efforts, to
10 suggest that, perhaps, Teresa was, uh, in Steven
11 Avery's trailer. Do you recall that?
12 A Yes.
13 Q All right. And I believe you indicated that
14 that, um, tact was taken on more than one
15 occasion in the interview?
16 A Yes.
17 Q All right. At any point did Mr. Dassey adopt
18 that and say, yeah, that happened?
19 A No.
20 Q So he resisted that suggestion?
21 A Very firmly.
22 Q Um, you were asked about a picture. Do you know
23 if you had a picture of the missing persons, um,
24 report, a poster, or a card?
25 A I'm trying to recall, but I think -- We had a missing

1 person case a month before. Wisconsin has a website.
2 I think we might have yanked a picture or a poster
3 off of it.

4 Q All right. So you can't recall, particularly,
5 this case versus the last case, the missing
6 person you worked on, as to which picture you may
7 have had?

8 A No, I can't. But I think Detective Baldwin could
9 clear this -- that up.

10 Q All right. Um, I'm going to have another
11 photograph marked and, uh, shown to you.

12 (Exhibit 204 marked for identification.)

13 Q (By Attorney Fallon) Do you recognize the people
14 which are depicted in that photograph?

15 A Uh, yes, I do.

16 Q And who -- who is depicted in that photograph?

17 A Steven Avery, Brendan Dassey, I think it's Al Avery,
18 and Al's wife, Mrs. Avery, I think Carol? Barb?
19 That's her.

20 Q All right. And, um, are those the individuals
21 that you spoke with on Saturday and Sunday,
22 November 5 and November 6?

23 A Yes.

24 Q All right. And, now, Counsel asked you questions
25 about, um, uh, leaving the property so early. In

1 other words, sunset on Saturday evening. What
2 caused you to leave Saturday evening?

3 A Mr. Avery, Al Avery, was, uh, intoxicated, and riding
4 around in a golf cart, and told us to get off his
5 property or he'd shoot us.

6 Q All right. So you left?

7 A We left the Avery property and just maintained on the
8 road.

9 Q All right. And, thus, you resumed your
10 investigation the next day?

11 A Correct.

12 Q All right. And the next day was Mr. Avery more
13 receptive?

14 A Yes.

15 Q All right. And cooperative?

16 A Yes.

17 Q All right. And, thus, you were able to continue
18 with the, um, investigation on Sunday?

19 A With the interview of Steven Avery, initially, yes.

20 Q All right. Um, particularly with respect to the
21 picture of Brendan Dassey in, I think, Exhibit
22 204 it is?

23 A Yes.

24 Q All right. Um, is that a -- a fair depiction of
25 his, um, physical appearance and attributes at or

1 around the time of this, um, interview on
2 November 6?
3 A Yes.
4 Q Uh, in other words, he appears to be a little
5 heavier in that photograph than he does --
6 ATTORNEY EDELSTEIN: Your Honor --
7 Q (By Attorney Fallon) -- today?
8 ATTORNEY EDELSTEIN: -- object to the
9 leading nature.
10 THE COURT: Uh, overruled.
11 A Yes.
12 Q (By Attorney Fallon) All right. Do you
13 recognize the location of that picture?
14 A I believe so.
15 Q And what is it?
16 A It's the Avery cabin located in the town of
17 Stephenson, I believe. I was in there once, and, un,
18 the table and the, uh, furnishings look familiar.
19 Q All right. Um, one last question. Uh, Counsel
20 asked you, uh, in response to my questions about
21 assessing Mr. Dassey's demeanor, does the playing
22 of the audiotape assist in recollecting his
23 demeanor during the course of the interview?
24 A Uh, definitely.
25 ATTORNEY FALLON: No further questions.

1 Would offer the exhibit.

2 THE COURT: Any objection to the exhibit?

3 ATTORNEY EDELSTEIN: No, that's fine,
4 Your Honor.

5 THE COURT: All right. The exhibit is
6 received. I think that's, uh, two thou -- 204?

7 THE CLERK: Yep.

8 ATTORNEY FALLON: May we publish the
9 exhibit, then, on the ELMO?

10 THE COURT: Sure.

11 ATTORNEY FALLON: Thank you.

12 THE COURT: Any recross?

13 ATTORNEY EDELSTEIN: Just very briefly.

14 RECROSS-EXAMINATION

15 BY ATTORNEY EDELSTEIN:

16 Q Uh, Detective, um, while they get that up on the
17 screen so the jury can see that picture, um,
18 where did that picture come from? Do you know?

19 A No, I do not.

20 Q Pard me?

21 A No, I do not.

22 Q All right. Um, Mr. Fallon asked you if that
23 fairly depicted the condition, demeanor of the
24 defendant, but he's sitting at the kitchen -- I'm
25 sorry. The -- the physical attributes. Um, when

1 you talked to him, um, you didn't get any
2 information from him about height, weight,
3 anything like that, did you?
4 A No.
5 Q Okay. Um, other than that hour and twenty-minute
6 contact, that was really -- that's -- that's
7 really the extent of your total contact with him
8 throughout your participation in this
9 investigation; right?
10 A Yes.
11 Q Okay. That's all.
12 ATTORNEY EDELSTEIN: Your Honor, we
13 would move, uh, 202 and 203.
14 THE COURT: Any objection to receiving the
15 Exhibit Nos. 202 and 203?
16 ATTORNEY FALLON: We would move for
17 their admission.
18 THE COURT: Well, it's -- it's already
19 been offered by the defense.
20 ATTORNEY FALLON: Oh.
21 THE COURT: I'm asking if you have any
22 objection.
23 ATTORNEY FALLON: I'm sorry. I
24 thought --
25 THE COURT: All right.

1 ATTORNEY FALLON: Obviously, we don't.

2 THE COURT: All right. They're received.
3 You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 ATTORNEY FALLON: It's, um -- I think
6 it's too late to start our next witness. He'll
7 be a lengthy witness.

8 THE COURT: Can't we start it and at least
9 get some testimony now?

10 ATTORNEY FALLON: We -- We can, if you
11 wish.

12 THE COURT: Let's do it.

13 ATTORNEY FALLON: State would call, uh,
14 Investigator Wiegert.

15 THE COURT: I think, before he testifies
16 and is sworn in, there's a -- another trial
17 stipulation that is to be, uh, published; is that
18 correct?

19 ATTORNEY KRATZ: Yes.

20 ATTORNEY FALLON: I believe that's --
21 that's true.

22 THE COURT: All right. Ladies and
23 gentlemen, I reminded you before that trial
24 stipulations were evidence and should be treated
25 as such. This trial stipulation reads as

1 follows:

2 Number one. On October 31, 2005, Angela
3 Schuster was the manager for *AutoTrader Magazine*
4 with headquarters in Milwaukee, Wisconsin.

5 On the same date, Dawn Pliszka performed
6 duties as receptionist for *AutoTrader*.

7 Number two. That if called to testify,
8 Angela Schuster would testify that Teresa Halbach
9 was hired as a photographer for *AutoTrader* in
10 October, 2004, and continued in that employment
11 through October 31, 2005.

12 Schuster would further state that Teresa
13 Halbach had performed photo shoots at the Avery
14 salvage business on five occasions prior to
15 October 31 in 2005, including June 20,
16 October 22, October -- or, excuse me. Let me
17 start again. June 20, August 22, August 29,
18 September 19 and October 10.

19 Number three. That if called to
20 testify, Dawn Pliszka would testify that on
21 October 31, 2005 she received a phone call from
22 Steven Avery at approximately 8:12 a.m., at which
23 time Avery requested that, quote, the same girl
24 that had been out here before, end quote, come to
25 his property to take photos of a van he had for

1 sale.

2 Pliszka would further state that Avery
3 made the appointment under the name, quote, B.
4 Janda, end quote, and that Pliszka left a
5 voicemail for Teresa Halbach at 9:46 a.m. asking
6 if she could make the appointment.

7 Number four. That if called to testify,
8 Dawn Pliszka would further testify that at
9 2:27 p.m. she did speak with Teresa Halbach on
10 Teresa's cell phone at which time Ms. Halbach
11 indicated that she was, quote, on her way, end
12 quote, to the Avery property from her previous
13 appointment.

14 That is the entirety of that
15 stipulation. It will be marked as Exhibit 205?

16 THE CLERK: Yes.

17 (Exhibit 205 marked for identification.)

18 THE COURT: Uh, first to the State, is this
19 your stipulation?

20 ATTORNEY FALLON: It is.

21 THE COURT: To the defense, is this your
22 stipulation?

23 ATTORNEY FREMGEN: That's correct.

24 THE COURT: All right. It's received. All
25 right.

1 ATTORNEY FALLON: State will continue,
2 uh, with Investigator Mark Wiegert.

3 **MARK WIEGERT,**

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

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

9 THE WITNESS: Mark Wiegert,
10 W-i-e-g-e-r-t.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q How are you employed?

14 A I'm an investigator with the Calumet County Sheriff's
15 Department.

16 Q How long have you been employed by the Calumet
17 County Sheriff's Department?

18 A Approximately 14 years.

19 Q How long have you held the rank of investigator?

20 A It will be about five years.

21 Q And what are, generally, the types of cases that
22 you've been asked to investigate in your capacity
23 at the Sheriff's Department?

24 A In our Department, we do a wide variety of
25 complaints. Anything from thefts, to burglaries, to,

1 um, missing persons complaints, um, death
2 investigations, up to homicide investigations.

3 Q All right. And, um, in this particular case, how
4 is it that you are involved in this case?

5 A Um, I happened to be working on, um -- in November.
6 I believe it was November 3, to be exact. Um, one of
7 our patrol deputies had taking a phone call -- or,
8 actually, a complaint, um, about a missing person
9 complaint. Um, it was actually, uh, Karen Halbach
10 had called our Department to report that her
11 daughter, uh, was missing and they haven't heard from
12 her in several days.

13 After, um, patrol deputy had taken the
14 initial information, excuse me, she had contacted
15 me and requested my assistance, um, in attempting
16 to locate Teresa.

17 Q All right. And, um, from that point on have you
18 been involved in the case?

19 A I have. Yes.

20 Q Now, there's been some, uh, discussion, uh, both
21 by, um, Special Agent Fassbender and others,
22 about your role as one of the lead investigators
23 in this case. Tell us when that occurred?

24 A Sure. Um, on November 5, when the vehicle was
25 discovered, um, on the Avery Salvage Yard property

1 uh, we were requested by Manitowoc County to lead the
2 investigation.

3 At that point when we realized how big
4 and how massive the salvage yard was, not only
5 the salvage yard but all the residences, uh, the
6 outbuildings, all the property that surrounded
7 it, um, we realized that it was a little more
8 than our Department could handle on its own. Um,
9 at that point we contacted the, uh, Wisconsin
10 Department of Justice and requested their
11 assistance.

12 Q And who responded on behalf of the Department of
13 Justice?

14 A Uh, at that time, uh, Agent Tom Fassbender, who you,
15 um, heard earlier in the week testify, um, did
16 respond, um, as well as several other agents from the
17 Department. Um, at that point our Department was
18 handed the investigation, and myself and Agent
19 Fassbender were named the lead investigators of the
20 com -- of the, uh -- of this case.

21 Q All right. And, um, let's set that aside for a
22 moment. And in the time we have, um, this
23 afternoon, I'd like to focus your attention on a
24 particular part of your investigation in this
25 case, all right? Specifically, that is with

1 respect to, uh, your interview, uh, in context
2 with a young woman by the name of Kayla Avery.
3 All right.

4 Specifically, um, directing your
5 attention to February 20, 2006, on that
6 particular day, did you have, uh, an opportunity
7 to interview Kayla Avery?

8 A I did. Um, myself, along with a female detective at
9 our Department by the name of, uh, Wendy Baldwin, had
10 went to, um, the Avery property, which would be the
11 Earl and Candy Avery property, um, to interview
12 Kayla.

13 Our purpose for going there was because
14 we had some information from another person,
15 which we had interviewed, that Kayla had
16 information about Steve Avery. Our purpose for
17 going there was to interview Kayla in reference
18 to Steve Avery.

19 Q All right. And at some point during that
20 interview did the discussion change focus from
21 Steve Avery to Brendan Dassey?

22 A Yes. Um, the interview started out about Steve
23 Avery, and Kayla was talking about her relationship
24 with Steve Avery. And just about at the end of that
25 interview, Kayla, uh, out of the blue, basically,

1 came out and told us that, uh, she had a cousin by
2 the name of Brendan, and that Brendan was, quote,
3 acting up lately.

4 So we asked Kayla what she meant by
5 Brendan acting up lately. At that point Kayla
6 told us that Brendan would just stare into space
7 and start crying, basically, uncontrollably. She
8 also told us that Brendan had -- had lost
9 approximately, what she estimated to be, about 40
10 pounds.

11 Q Now, based on this information, what did you
12 decide to do?

13 A Well, after looking at that information, um, and
14 reviewing other interviews that were done, we decided
15 that, um, we needed to talk to Brendan again.

16 Q And did you talk to him?

17 A We did. Yes.

18 Q And when did you talk to Brendan again?

19 A Um, myself and Agent Fassbender interviewed Brendan
20 on February 27 of 2006.

21 Q All right. Now, before we get into the details
22 of that, I have a few more questions relative to
23 Kayla Avery. On this December 20, 2006 interview
24 of Kayla, who was present?

25 A It had actually been February.

1 Q Excuse me. I'm sorry. February 20?

2 A Um, Kayla's -- Kayla was present. There was -- there

3 was two of us investigators, myself and Wendy

4 Baldwin, Kayla, her mother, Candy, and her father,

5 Earl.

6 Q All right. And, um, did there come a time where

7 you reinterviewed Kayla Avery?

8 A We did. Um, shortly after Brendan was arrested,

9 actually, we interviewed Kayla again, and that would

10 have been on March -- I believe it was March 7 of

11 2006.

12 Q All right. And what was the reason for, um,

13 revisiting or reinterviewing Kayla Avery?

14 A Well, I take you back a little bit, uh, shortly

15 after, uh, Brendan was arrested, and I believe would

16 have been on, like, February 28, we had received a

17 call from the Mishicot School District.

18 Um, two of the counselors at the

19 Mishicot School District, after hearing that

20 Brendan had been arrested, had called and

21 reported that they may have some information in

22 reference to the Teresa Hal -- Teresa Halbach,

23 uh, homicide.

24 Q All right. And, as such, did you then respond to

25 the school to interview the counselors?

1 A We did. Um, again, myself and Agent Fassbender went
2 to the school the following day, right away in the
3 morning, uh, where we met with, uh, two counselors,
4 uh, Mrs. Brandt, and I believe it was a
5 Mrs. Baumgartner.

6 Q All right. And you interviewed them?

7 A We did. Yes.

8 Q After interviewing them, where did you go next?

9 A Well, after getting the information, um, we thought
10 we needed to go back and talk to Brendan ag -- excuse
11 me -- Kayla again.

12 Q All right. Did you, in fact, go back and
13 reinterview Kayla Avery?

14 A We did. We -- Actually, after interviewing the two
15 counselors, we made phone contact with, um, Kayla's
16 mother and informed her that, um, we had been at the
17 school and that we needed to talk with Kayla again.
18 And we actually set up an appointment with Kayla's
19 mother, and Kayla's mother, Candy, invited us, um, to
20 her residence. Um, so waited for Kayla to come home
21 from school, and then we went over to the Avery
22 residence, and, uh, again, interviewed Kayla in the
23 presence of her mother, again, and her father.

24 Q All right. Uh, was her mother present for the
25 entire conversation?

1 A Her mother was. Uh, Candy Avery was present for the
2 entire conversation with Kayla. Um, her father,
3 Earl, was in and out.

4 Q All right. And during that interview with Kayla
5 Avery, did you discuss with her, um, the report
6 that Brendan Dassey told her he had seen body
7 parts in a fire behind Steven's garage?

8 A We did. Yes.

9 Q And what did she say about that?

10 A Well, Kayla came out and told us quite a few things
11 at that point. Um, basically, she first broke down
12 crying, and indicated to us, that, um, she had
13 learned from her cousin, Brendan, that, um -- she
14 stated that she had learned this in about December
15 around the time there was a birthday party that they
16 were both at at Kayla's house, and that Kayla --
17 correction -- Brendan had told Kayla that he had went
18 and got the mail, and went over to Steven Avery's
19 residence, and went into the residence, and observed
20 Teresa Halbach pinned up in Steve Avery's bedroom.

21 She went on to tell us a couple other
22 things. Um, she told us that Brendan had told
23 her that after he had saw Teresa Halbach pinned
24 up in the bedroom, that he exited the residence,
25 and while leaving Steve Avery's residence, he

1 heard screaming coming from Steve Avery's
2 residence.

3 Kayla went on to tell us how, um -- She
4 had mentioned Brendan being out at the fire on
5 Halloween night, and she also told us that her
6 and her mother had seen the fire on Halloween
7 night.

8 Kayla went on to tell us how Brendan
9 described seeing body parts later that day, or
10 that evening, in the fire behind Steve Avery's
11 residence.

12 Q Now, during -- during the, um, questioning of
13 Kayla Avery earlier this week, a statement,
14 Exhibit No. 163, was shown to her. Are you
15 familiar with that?

16 A I am. Yes.

17 Q All right. Was that statement generated by her?

18 A That's correct. Kayla wrote out that statement on
19 her own.

20 Q All right. And is that -- was that statement
21 written on this day, March 7, 2006?

22 A Yes.

23 Q During the, um, interview, uh, at Kayla's home,
24 did she appear confused at all? Unsure of what
25 she was telling you?

1 A No, she did not.

2 Q Was she upset?

3 A Yes, she was upset.

4 Q Did it appear to you that this was something easy
5 for her to tell you about?

6 A No. Obviously, not. I mean, like I explained
7 before, she, um -- she had broke down crying, and was
8 visibly upset when she was telling us about this
9 information.

10 Q All right. Now, I want to back up a little bit
11 here. Returning, then, three weeks earlier --
12 two weeks earlier, excuse me, to that February 20
13 interview, your first encounter with Kayla Avery,
14 at that particular point in the investigation
15 what plans, if any, did you investigators have
16 relative to speaking with other members of the
17 Avery family?

18 A Let me just back up a little bit. We were
19 constantly, as investigators, have meetings about
20 this case and where we should go with it, what we
21 should be doing.

22 Um, because of the enormity of the case,
23 we would get leads in all the time. There would
24 be people calling in, look at this, look at that.
25 Um, what we decided that we needed to do in order

1 to do a thorough investigation, we needed to go
2 back and interview everybody who had access or
3 who lived on that property.

4 Um, I felt, and I -- I think I can speak
5 for Mr. Fassbender, that I don't believe we --

6 ATTORNEY FREMGEN: Objection. Speaking
7 for another person, Judge. I think the witness
8 can only speak for himself.

9 THE COURT: All right. Sustained. Speak
10 for yourself.

11 THE WITNESS: Certainly. I felt that we
12 needed to -- In order to do a thorough
13 investigation, we needed to go back and talk to
14 everybody who lived on that property.

15 Q (By Attorney Fallon) All right. And so around
16 that time was that the plan?

17 A Yes. Absolutely was.

18 Q Based on the, um -- At that particular point in
19 time could you say, from an investigative point
20 of view, that Brendan Dassey was at all a
21 suspect?

22 A No. Uh, we didn't consider him a suspect any more
23 than we considered anybody else at that point as a
24 suspect. No.

25 Q All right. Now, who was the first one of the

1 family members to be reinterviewed?

2 A I can't recall exactly which one, but I can say
3 that -- And -- And if I can back up a little bit
4 again?

5 Q Sure.

6 A Um, we not only felt the people on that -- that lived
7 there, we thought the extended family, i.e., Kayla,
8 and Earl, and Candy, and their children should be
9 interviewed as well. So by my recollection, it was
10 probably, um, Kayla, most likely.

11 Q All right. And, uh, during the course, did you,
12 in fact, go back and reinterview a, um, um --
13 most, if not, all, of the immediate and extended
14 family?

15 A I can tell you everybody that lived on that property,
16 and the extended family, as far as we knew it, such
17 as, Earl, Candy, and their children, were
18 reinterviewed. Yes.

19 Q All right. In terms of the decision to
20 reinterview Brendan Dassey on February 27, um,
21 was there any particular reason that occurred at
22 or around that time?

23 A Yes. Um, after receiving information from Kayla on
24 the 20th of February, obviously, the loss of weight,
25 the uncontrollable crying, are signs that we look

1 for. I mean, it's a change in behavior. It's --
2 it's not normal for a 16-year-old boy to be just
3 crying uncontrollably and just lose that type of
4 weight. So, obviously, that's something we look for.

5 And, for lack of a better word, it kind
6 of moved into the front of the line, and we
7 needed to -- we needed to interview him and talk
8 to him.

9 Q Now, and at that particular point did you have
10 some suspicion as to what may be causing the
11 weight loss and change in behavior? I mean,
12 practically speaking?

13 A Well, absolutely. I mean, at that point, um, we felt
14 he knew more than he was telling us. And -- and
15 we -- we do a lot of other things before we go
16 interview people. We review prior interviews, such
17 as the gentleman's interview that was sitting here
18 prior to me. Marinette County's interview. I mean,
19 review that. And we take a look at what he told
20 them. There are things in there that didn't quite
21 fit either.

22 So you take some of the things that he
23 told the Marinette officers that just didn't seem
24 to fit. And then his, uh, the losing weight, and
25 the uncontrollable crying. Obviously, that, uh,

1 points you in a direction you want to go. He's
2 somebody you need to talk to.

3 Q All right.

4 ATTORNEY FALLON: Your Honor, at this
5 particular point I think it's time to take that
6 break.

7 THE COURT: I think -- Yeah. This would
8 appear to be a good break point time. We'll
9 adjourn for the day. Uh, ladies and gentlemen,
10 I'll remind you, don't talk about this among
11 yourselves or with anyone else. We'll convene
12 tomorrow at 8:30.

13 (Court stands adjourned at 4:26 p.m.)
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1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
17

18
19 Jennifer K. Hau
Jennifer K. Hau, RPR
20 Official Court Reporter
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23
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3 STATE OF WISCONSIN,
4

5 PLAINTIFF,

JURY TRIAL

TRIAL DAY 5

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,
8

9 DEFENDANT.

10 **DATE:** APRIL 20, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

14 KENNETH R. KRATZ
15 District Attorney
On behalf of the State of Wisconsin.

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

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

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

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

24 BRENDAN R. DASSEY
25 Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 8:36 a.m.; jurors not present.)

2 THE COURT: Good morning, Counsel. Uh, I'm
3 going to call the case. It's 06 CF 88, State of
4 Wisconsin vs. Brendan Dassey. Appearances, please.

5 ATTORNEY FALLON: Good morning, Your
6 Honor. May it please the Court, the State
7 continues in its appearance by Special
8 Prosecutors, Ken Kratz, Tom Fallon and Norm Gahn.

9 ATTORNEY FREMGEN: Attorney Mark Fremgen
10 appears with Ray Edelstein. The, uh, defendant
11 appears in person.

12 THE COURT: Uh, the Court is going to go on
13 the record before the jury -- thanks -- before the
14 jury comes in to -- to note that, uh, prior to
15 coming in here, Counsel and I have had a discussion.
16 I informed them that one of the jurors was having
17 some health-related issues. Uh, after the
18 discussion, she is going to be released. So,
19 Counsel, is that correct?

20 ATTORNEY FALLON: Yes, Judge, that's our
21 understanding, and we would agree with the
22 Court's assessment to have, uh, her excused.

23 THE COURT: Defense?

24 ATTORNEY FREMGEN: That's correct.

25 THE COURT: All right. Bring the jury in.

1 ATTORNEY FALLON: Judge, are you going
2 to read the instruction about the video as well?

3 THE COURT: I am.

4 ATTORNEY FALLON: Okay.

5 THE COURT: Once we get to it.

6 (Jurors in at 8:39 a.m.)

7 THE COURT: All right. Be seated. Is
8 prosecution ready to proceed?

9 ATTORNEY FALLON: Yes. We would ask
10 that the, uh -- Investigator Wiegert retake the
11 stand.

12 **MARK WIEGERT,**
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

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

17 THE WITNESS: Mark Wiegert, W-i-e-g-e-r-t.

18 **DIRECT EXAMINATION CONT'D**

19 BY ATTORNEY FALLON:

20 Q Investigator Wiegert, I believe we left off
21 yesterday afternoon, uh, regarding, uh, your
22 intended interview of the defendant on
23 February 27. Would you, um, first of all, tell
24 us of your plans to interview the defendant on
25 that day?

1 A Uh, yes. Um, myself and Agent Fassbender had went to
2 the Mishicot School System and, uh, that's where we
3 met with Mr. Dassey that day.

4 Q All right. And the, um -- You, uh, gestured to,
5 uh, Mr. Dassey. Just, officially, and for the
6 record, is the, uh, Brendan Dassey that you
7 interviewed on that day and subsequent days
8 present in court today?

9 A He is. He's seated at the -- to the left -- my left
10 of his attorney. He's wearing a blue shirt and
11 glasses.

12 Q Very well.

13 ATTORNEY FALLON: The record should,
14 again, reflect that the, uh, witness has
15 identified the defendant.

16 THE COURT: It will so reflect.

17 ATTORNEY FALLON: Thank you.

18 Q (By Attorney Fallon) About what time did you
19 arrive at the Mishicot High School on that day,
20 February 27?

21 A I believe it was about 12:30 or so in the afternoon
22 when we first got to the school.

23 Q Where did you meet with Mr., uh, Dassey, the
24 defendant?

25 A Uh, we met with Mr. Dassey in a conference room just

1 off of where the office for the, I believe it's the
2 high school, would be located.

3 Q Who else was present?

4 A Uh, myself and Mr. Fassbender.

5 Q Did you then, um, commence an interview of Mr.,
6 uh, Dassey that day?

7 A We did. We did about, um, hour, little over an hour,
8 interview with Mr. Dassey at the school.

9 Q All right. And at the, um, conclusion -- Well,
10 first of all, tell us, was that interview at all,
11 um, memorialized in any fashion?

12 A We did do an audiotape. Unfortunately, all we had
13 was one of the old cassette recorders, and we had
14 that sitting on a, um, table between us, and it -- it
15 didn't pick up very well. The audio is very poor.

16 Q All right. At the conclusion of the interview,
17 what did you do?

18 A After the interview, we had contacted, um District
19 Attorney Kratz to inform him of what we had learned
20 from that interview. Uh, Mr. Kratz requested that we
21 memorial -- memorialize this interview in a -- in a
22 better fashion. So, um, at that point we decided --
23 we made arrangements to go to, uh, Two Rivers Police
24 Department where there would be a videotaped, um,
25 interview done. So that's what we did.

1 Q All right. What arrangements did you make in
2 advance to conduct a videotaped interview?

3 A We actually contacted, um, Brendan's mother and, uh,
4 informed her what we wanted to do. Um --

5 Q And how did she respond?

6 A Barb actually responded to the school at that time,
7 um, and she rode with myself, Agent Fassbender, and
8 Brendan to Two Rivers Police Department all in the
9 same car. We gave her a ride there.

10 Q And, um, tell us approximately what time did you,
11 um, interview the defendant at Two Rivers Police
12 Department?

13 A Um, it was somewhere between 3:20 and 3:30 in the
14 afternoon when we started the interview at Two Rivers
15 Police Department.

16 Q And where was the, uh, defendant's mother, Barb
17 Janda, at that time?

18 A We had spoke to Barb prior to doing the interview,
19 and indicated she had every right to be in the
20 interview if she wished to be in. At that time she
21 declined. She waited in a outer waiting area, um, of
22 the police department while we conducted the
23 interview.

24 Q All right. And approximately how long did you,
25 uh, speak with Mr., uh, Dassey, uh, this

1 afternoon?

2 A I believe it was less than an hour that we did that
3 interview.

4 Q All right. At the conclusion of the interview,
5 uh, what was done between you and Special Agent
6 Fassbender?

7 A Obviously, we discussed the interview and discussed
8 what we had learned in the interview.

9 Q All right. After, um, meeting and interviewing
10 Mr. Dassey, uh, on this day, February 27, what
11 was your thinking?

12 A Well, at that time -- That's the first time Brendan
13 places himself at the crime scene is during that
14 interview. Places himself at the fire. So we
15 decided that we needed to interview everybody else
16 that lived on that property and we needed to do that
17 right away to see what other people knew. We didn't
18 know if other people knew about this at that point or
19 not. So we decided that we needed to conduct a lot
20 of interviews.

21 Q Did you have any feeling as to whether or not the
22 defendant had told you everything that he knew at
23 that time?

24 A My feeling was, no, he didn't. That he knew more,
25 because every time we would talk to him he'd give you

1 a little bit more, give you a little bit more. And,
2 again, that's the first time he placed himself,
3 basically, on that crime scene.

4 Q All right. Now, at that -- after those, um, two
5 interviews, uh, that particular day, did you
6 think that he was a suspect at that particular
7 point?

8 A No. Uh, again, in my thinking at that point, he's
9 still a witness -- a wis -- a witness to something
10 horrific. Um, he tells us that he sees body parts in
11 a fire. I mean, so we're thinking he is a witness to
12 something at that point that...

13 Q All right. Now, um, earlier, we heard from
14 Special Agent Fassbender that, um, the defendant
15 and his mother, uh, were put up at the, um, Fox
16 Hills, um, Hotel in Mishicot. How did that come
17 to pass?

18 A Well, there are two reasons that we decided to do
19 that that night. Um, the first reason, number one,
20 first and foremost in any law enforcement's mind, is
21 safety. I mean, our job is to protect people.
22 That's the bottom line. Because of the information
23 he told us, if there was somebody else that lived out
24 there that would have found out and may have also
25 been involved, we were worried for his safety, that

1 they would somehow get to him and maybe harm him. So
2 we thought, to be on the safe side, we needed to put
3 him, um, somewhere off of that property.

4 Number two, as any law enforcement
5 officer knows, integrity in an investigation is
6 very important, and it can be tainted very easily
7 by somebody going back and saying, this is what I
8 told the cops. Cover this up. Do this. And we
9 didn't want that to happen. We didn't want
10 Brendan, or his mother for that matter, going
11 back and telling anybody else on that property
12 what they told us for fear of tainting that
13 investigation. So there were two reasons that we
14 did that.

15 Q All right. Now, um, Special Agent Fassbender
16 told us about an interview he had with the
17 defendant and his mother later that evening, the
18 27th. Did you and he discuss the results of his,
19 um, interview that evening?

20 A We did. Um, Agent Fassbender informed me that he had
21 learned from another family member that Mr. Dassey
22 might have had more information about that, and also
23 that there were some pants that, um, maybe had some
24 bleach stains on it. Agent Fassbender informed me
25 that he went back to Mr. Dassey and his mother later

1 on the 27th, that evening, and asked Mr. Dassey about
2 the pants. And that's the first time Mr. Dassey,
3 Brendan, ever told us about stains on his pants,
4 cleaning up the garage floor. So now he puts himself
5 further into it. Puts himself in that garage later
6 on that night.

7 Q All right. So are you saying that in -- in
8 either one of the previous interviews that day,
9 he never mentioned anything about bleach, or
10 cleaning up in the garage, or any of that?

11 A No. We never knew anything about that until Agent
12 Fassbender learned it and went back and talked to
13 Brendan later that night, on the 27th. That's when
14 we learned that.

15 Q Um, as a result of that information, uh, what did
16 you decide to do?

17 A Well, obviously, when you keep learning little bits
18 and pieces, Brendan keeps telling us a little more
19 here, a little more there, we realized it could
20 probably be either saw more, knew more, something.
21 We need to make arrangements to go back and talk to
22 him again. That was obvious.

23 Q Now, during these interviews on the 27th, did he
24 admit any involvement in any part -- any of this?

25 A No. Um, basically, he was telling us he was a

1 witness.

2 Q All right. Um, so then did you make arrangements
3 to reinterview the defendant?

4 A We did. Yes.

5 Q And tell us about the preparation of those plans?

6 A Um, that would take us to March 1. Um, at that point
7 we contacted Brendan's mother again, told her that we
8 would like to take Brendan to the Manitowoc Sheriff's
9 Department so we could do a videotaped interview of
10 Brendan to see what else he maybe had known, see what
11 else maybe he saw. It's obvious that he knew more
12 than he was telling us.

13 So at that point, um, we did, again,
14 talk to his mother, told her what we wanted to
15 do, and she gave us permission to do that, and,
16 um, Brendan agreed, also, and Brendan went with
17 us to the Manitowoc Sheriff's Department.

18 Q All right. And then did you proceed to, um,
19 interview Brendan Dassey on March 1?

20 A We did. Yes.

21 Q And was that interview memorialized in any
22 capacity?

23 A That interview was videotaped.

24 Q All right. Now, um, before we, um, present the,
25 uh, results of that interview, I'd like to talk

1 to you a little bit first, about, um, some of the
2 interview techniques that you employed during the
3 course of your interrogation of, uh -- of, uh,
4 the defendant?

5 A Sure.

6 Q During the, um, interview on March 1, did you and
7 Special Agent Fassbender employ any deception
8 during the course of, um, your interviewing him?

9 A Absolutely. Yes.

10 Q All right. And tell us why?

11 A Well, one of the reasons that we say things that may
12 be not be true, or use deceptive measures, is to see
13 how suggestible he is. I mean, if I would say
14 something that's not true, and he agrees with
15 everything I say that's not true, obviously that's a
16 problem. So we use techniques like that to see if
17 he'll resist that. And, in fact, he did.

18 He would bring up certain things that we
19 knew not to be true, and he would say, that --
20 that's not true. It's not true. He'd stick to
21 that. So, yeah, it's very important, in my
22 opinion and my experience as -- as doing
23 interviews, you do have to do that. Absolutely.

24 Q Do you also engage in a technique on information
25 that you suspect to be true, but may not know it

1 true, to see if the person you're interviewing
2 will tell you anything about it?

3 A Sure. I mean, it -- it works both ways. I mean,
4 you -- you may not know. You may -- Again, like you
5 said, you may suspect something, and you may say
6 that, and he may, yeah, that's true. And -- and
7 that -- Again, that happens. It goes both ways.

8 Q All right. Now, um, what other, um, interview
9 techniques were, um, employed during your, um,
10 uh, questioning of the defendant on March 1?

11 A We would say things like, um, you're going to hear on
12 the tape, that we already know, um, and they refer to
13 it as having superior knowledge. Um, and we used
14 that technique in that interview as well.

15 Q All right. And tell us a little bit about that
16 technique? I mean, what is this superior
17 knowledge?

18 A Anybody you interview, no matter what type of
19 incident it is, what type of crime it is, it's
20 against your self-preservation instincts. If you're
21 involved in something, to come out and admit to it,
22 nobody likes to admit to things. I've been doing
23 interviews a long time and very seldom does somebody
24 come out on the first time you talk with them and
25 admit things.

1 So when you use the quote, unquote,
2 superior knowledge thing, it implies to them that
3 you know more. That you can't fool me. We know
4 all about it. You might as well just tell us.
5 And that's the reason you use those type of
6 things.

7 Q In-- in your, uh, experience as an investigator,
8 how often has someone immediately acknowledged
9 their involvement in a -- in an offense when you
10 sit down and begin to question them?

11 A Almost never.

12 Q Um, is it unusual at all for people to minimize
13 their involvement in offenses in the initial, um,
14 interview?

15 A No. And if you look at interviews -- And, again, you
16 take almost any crime from -- from a burglary, sexual
17 assault, to a homicide, it's normal that people will
18 minimize. Try to, yeah, I did a little bit, but I
19 really didn't do it all. Things like that. And
20 it's -- it's -- it's -- it equates to peeling an
21 onion back. You take those layers off. Those
22 defensive layers of people. And that's -- that's
23 what you do in interviews. That's what we do.

24 Q And, um, were there any other, um, interview
25 techniques employed, uh, during the questioning

1 of the defendant that day?

2 A Um, yeah. We -- we would get friendly with him. Um,
3 we would tell them that, you know, it's okay. Things
4 are okay. Because you don't want somebody to -- You
5 don't want somebody upset. You don't want somebody
6 afraid of you. You want to be -- You know, different
7 officers use different techniques. But I found the
8 best way for anybody is going to be you -- you try to
9 befriend them. You be nice to them. I'm not a "get
10 in your face" type interviewer.

11 Q Is that a -- any, um, common technique that you
12 employ?

13 A Absolutely. Yes.

14 Q All right. Um, prior to, um -- Prior to, um,
15 questioning, uh, the defendant, did -- did you
16 advise him of his constitutional rights?

17 A Yes. He was read his **Miranda** rights from our -- our
18 rights form. Our warning and waiver of rights form.
19 (Exhibit No. 206 marked for identification.)

20 Q Uh, you've been handed an exhibit. Tell us what
21 it is?

22 A It's the Calumet County Sheriff's Department Warning
23 and Waiver of Rights form.

24 Q What is our exhibit number on that form?

25 A Uh, 206.

1 Q All right. And tell us a little bit about that
2 form, if you would?

3 A Um, the **Miranda** rights are -- are -- You've probably
4 all seen it on TV if you watch any cop shows. Um,
5 the right to remain silent. Things like that. It
6 was just a form that we use that spells it all out.
7 The bottom two questions indicate, do you know and
8 understand each of -- each of these rights that I've
9 explained to you? And it's either a yes or a no.
10 And understanding these rights, do you wish to make a
11 statement? And it's either a yes or a no.

12 Q All right. Now, I also note that, uh, from my
13 previous examination of the form, there's some
14 writing on that form? Some, uh, handwriting as
15 opposed to the printed form?

16 A Yes. What --

17 Q Tell us about that?

18 A What I do when I read the rights to people, I check
19 them all off, first of all, to make sure I've covered
20 them all. And then I have the person initial them.
21 Take a look at what I read to them, and I have them
22 initial them. Which I did in this case.

23 I also do that for the part of the
24 waiver where I ask them if they understand these
25 rights, and ask them if they want to speak with

1 me. Whether they say yes or no, I have them
2 initial them to -- to show that they have at
3 least looked at this form and read them.

4 And then there's a place for the, uh,
5 person I'm interviewing to sign, and there's a
6 place where I sign as a witness on the bottom.

7 Q All right. Now, in terms of presenting that
8 information to the defendant, did you read the
9 form to him or did he read it himself?

10 A I read the form to him. And, again, I showed him the
11 form and have him initial what I read.

12 Q All right. At any point did he show any
13 confusion, um, or misunderstanding of -- of the
14 information on the form?

15 A No, not at all.

16 Q Did he show any hesitancy about, um, his
17 willingness to speak with you and Agent
18 Fassbender on March 1?

19 A No.

20 Q All right. Um, at any point, um, did you, uh,
21 promise him, um, any inducements to -- in order
22 to get him to speak with you that day?

23 A No.

24 Q All right. Um, and on March 1, who else was, um,
25 present or around for this interview?

1 A Again, myself and Agent Fassbender conducted the
2 interview. Um, Brendan's mother had presented
3 herself at the Sheriff's Department sometime later
4 during the interview.

5 Q All right. Um, I believe we're ready to --

6 (Discussion off the record.)

7 ATTORNEY FALLON: That's probably a good
8 idea.

9 Q (By Attorney Fallon) Tell us about the, um -- the
10 specific location where the interview took place?

11 A Sure. The interview that we conducted on March 1 was
12 done, again, at the Manitowoc County Sheriff's
13 Department, which -- I don't know if you guys had a
14 chance to be outside, but right outside, the next
15 building over. Um, that interview was conducted in
16 the detective's portion of the Sheriff's Department,
17 which is, I believe, second floor of the Sheriff's
18 Department there.

19 Um, it's conducted in what we call a
20 soft room. Um, it -- it's like a small living
21 room, if you will. It's got a small couch, two
22 small soft chairs, it's got lamps for lighting.

23 It's not like you see on TV. Again, you
24 know, CSI, stuff like that, where it's this brick
25 wall room and this hard table and you got the

1 light shining on them and things like that. It's
2 a very, uh -- very comfortable room. And
3 that's -- that's where he was interviewed.

4 Q All right.

5 ATTORNEY FALLON: I believe we're, um,
6 ready.

7 THE COURT: Is this going to be a closed
8 caption video?

9 ATTORNEY FALLON: Yes.

10 THE COURT: I'm going to read the
11 instruction then.

12 ATTORNEY FALLON: Yeah, I think that
13 would be good.

14 THE COURT: All right. Uh, ladies and
15 gentlemen, closed caption transcripts have been
16 added to this videotape. If you, the jury, believe
17 in watching the video concurrently while reading the
18 closed caption words that there's a variation
19 between videotape and the closed caption, you are to
20 rely solely on the videotape, so...

21 Um, do you want the reporter to take
22 this? I mean, there's a transcript of this as
23 well. If I --

24 ATTORNEY FALLON: We can provide a
25 transcript, um, if necessary. We will be

1 introducing a DVD as, um, the actual evidence,
2 uh, consistent, of course, with the law and the
3 instruction you just read.

4 THE COURT: All right. I'll ask the
5 defense, do you have any objection if -- if the
6 reporter does not take this? Understanding that the
7 trustworthiness of it is secured by a number of
8 different things; a transcript, a CD.

9 ATTORNEY EDELSTEIN: Certainly as to the
10 CD.

11 THE COURT: All right.

12 ATTORNEY EDELSTEIN: No, there's no
13 objection if the reporter doesn't take it.

14 THE COURT: Okay. All right.

15 ATTORNEY FALLON: Um, if there's no
16 objection, could, um, Investigator Wiegert resume
17 a seat back here during the playing? Uh --

18 THE COURT: Do you have any objection?

19 ATTORNEY FALLON: We -- we will stop the
20 tape at one point and re-call him to ex --
21 explain a few things that are occurring, but
22 other than that, it will be about 2 hours and 20
23 minutes or so.

24 I guess we'll, uh, have Investigator,
25 uh, maintain his current position just for

1 facilitating the ease of talking about the -- a
2 few of the points that we will stop the tape at.

3 THE COURT: All right.

4 (Wherein DVD is played.)

5 (Wherein DVD is stopped.)

6 ATTORNEY FALLON: Your Honor, I think
7 we'll take our morning break at this time. The
8 closed caption did not pan out for us this time
9 around. And, secondly, we stopped the tape at
10 approximately 1208.

11 THE COURT: All right. The record will
12 reflect that. We'll recess until, uh, 10:35.

13 (Recess had at 10:17 a.m.)

14 (Reconvened at 10:38 a.m.)

15 THE COURT: Mr. Fallon, you may proceed.

16 ATTORNEY FALLON: Thank you, Judge. Um,
17 I believe we have it cued up to the appropriate
18 spot and we'll continue at this point.
19 Apparently, the program does not have a
20 particular pause button so it does have to be
21 repeated.

22 THE COURT: Okay.

23 (Wherein playing of DVD continues.)

24 (Wherein DVD is stopped.)

25 ATTORNEY FALLON: Your Honor, we've

1 spoken with counsel and we're going to speed up
2 through this break.

3 THE COURT: All right.

4 (Wherein playing of DVD continues.)

5 (Wherein playing of DVD is stopped.)

6 ATTORNEY FALLON: I think this would be
7 a good time to take the break.

8 THE COURT: I think you're right. Uh,
9 we will recess for the lunch hour. We'll --
10 we'll be back here at 1:05. I'll remind the
11 jury, no talking about this or anything related
12 to the case.

13 (Recess had at 11:59 a.m.)

14 (Reconvened at 1:32 p.m.)

15 THE COURT: Mr. Fallon, are you set to
16 proceed?

17 ATTORNEY FALLON: We are.

18 THE COURT: You may do so.

19 (Wherein playing of DVD is continued.)

20 (Wherein playing of DVD is stopped.)

21 ATTORNEY FALLON: Your Honor, I believe
22 we've agreed that the remainder of the, um,
23 discussion does not contain pertinent questioning
24 of the defendant and I think we agreed to, um,
25 stop the tape at this particular point.

1 THE COURT: And to the defense, is that
2 true?

3 ATTORNEY EDELSTEIN: It is, Your Honor.

4 THE COURT: All right.

5 Q (By Attorney Fallon) Investigator Wiegert, I
6 have a few, um, questions for you. Um, I think
7 I'll take these more or less in reverse order
8 from what we've just seen. Um, if you would,
9 please, um, tell us why -- First of all, from
10 your investigative efforts did, um, Teresa
11 Halbach have a tattoo on her stomach?

12 A No. We knew she didn't have a tattoo.

13 Q And why was that question put to the defendant?

14 A It's one of those things I kind of explained to you
15 guys before we started the, uh, interview. We -- we
16 do say things that are intentionally false. Um, as
17 you noticed, Brendan said, no, he didn't see a
18 tattoo. So he answered that appropriately. So we
19 give him false things to see if he'll just go along
20 with it. And clearly he doesn't.

21 Q Um, your colleague, um, In -- uh, Investigator
22 Fassbender, also asked certain anatomical
23 questions related to, um, Teresa Halbach's, um,
24 physical appearance and physical attributes.
25 What is the purpose of those questions?

1 A When Brendan told us that he sexually assaulted her,
2 that's the first time we knew that happened. Okay?
3 And when you do interviews in reference to sexual
4 assaults, one of the things that you ask the suspect
5 is, uh, certain questions about the body. Um, it's
6 to see if they can recollect, um, what they've seen
7 to see if -- again, to see if they can just go along
8 with it, see if they make things up. Um, and, again,
9 in that case I believe he answered those questions
10 appropriately. The color of the hair. Everything.

11 Q All right. Are those questions also asked to
12 test whether or not he actually saw what he said
13 he saw?

14 A Yes.

15 Q All right. Um, again, uh, there was a lengthy
16 break, um, that we sped through. Um, my estimate
17 was there was a break of almost about 28, 29
18 minutes, from 12:29 to 12:57. Could you tell us
19 what was going on at that time?

20 A Yes. Actually, we had made a phone call to the
21 prosecutor, Mr. Kratz. Um, Mr. Kratz, and there were
22 some other investigators, who were starting to
23 prepare a search warrant, um, based on some new
24 information. If you heard me pick up the phone
25 during that interview, and I said do not sign, do not

1 sign, um, do not serve. I don't remember if you
2 remember hearing that. I was stopping them from the
3 process of doing that search warrant, because we had
4 learned new information by that time and we wanted to
5 include that information in the search warrant.

6 So during that break, we were talking --
7 excuse me -- to the, uh, district attorney about
8 getting the proper information in that search
9 warrant.

10 Q All right. And, um, is this the interview, um,
11 that contributed information leading to the
12 search warrant which was executed at Steven
13 Avery's trailer and garage on March 1 and 2 that
14 we've heard earlier about in this trial?

15 A It is. This is an -- After this information was
16 provided to us, when we gained that search warrant
17 and signed by a judge, we went back and executed that
18 search warrant on the 1st of March after this, and
19 continued that into the 2nd of March. That's when we
20 recovered the two bullets based on Brendan's
21 information that she was shot in the garage, which is
22 one of the bullets that contained the DNA of Teresa
23 Halbach.

24 Q All right. Now, um, we also noted that there
25 were some drawings that you requested that the

1 defendant prepared?

2 A Yes.

3 Q Um, did you bring those with you today?

4 A Yes.

5 Q I'd like to ask you some questions about those

6 drawings. Uh, first -- first one -- first one, I

7 believe, is Exhibit 207?

8 A That's correct.

9 Q And what is depicted in Exhibit 207?

10 A Uh, Exhibit 207 is the picture of the knife that

11 Brendan drew for us.

12 Q All right. And are there any writings or other

13 markings other than the -- the depiction, itself?

14 A Yes. Um, Brendan signed it, he dated it, and he put

15 the time on there.

16 Q All right. And, uh, the next exhibit?

17 A Uh, 209.

18 Q Yes. What is depicted in Exhibit 209?

19 A Uh, this one depicts the garage. Um, Brendan drew

20 out the garage, and he had the snowmobile, um, in the

21 garage. He's got the vehicle in the garage. He's

22 got the lawnmower labeled. He also put in where they

23 laid Teresa, and where he and Steve are both

24 standing. Again, he signed this one, dated it, and

25 put the time on it.

1 Q All right. Exhibit 210?

2 A Yes.

3 Q What is depicted in Exhibit 210?

4 A This is a drawing he did of the burn pit area. Uh,
5 included in this drawing is he's got the garage. He
6 correctly drew out where the burn pit was. Uh, he
7 put the doghouse in. He even drew her body laying in
8 that depression, if you will, uh, where we found her
9 bones. And, again, he signed this one, he dated it,
10 and he put the time on it.

11 Q All right. And the last one, 208?

12 A Yes. This one is, um, a rendering of the -- Steve
13 Avery's bedroom. Again, in this one, he's got the
14 bed drawn in. He's got the dresser. He's got the
15 nightstand. He's got the closet. He put on the wall
16 the gun rack. Um, and he also drew Teresa's body on
17 the bed.

18 Q All right. I'm going to ask that, uh, your
19 colleague, Mr. Fassbender, take those exhibits
20 and bring those to the ELMO for publication.

21 ATTORNEY FALLON: It would begin with
22 207. The reverse order that you have them.
23 Two -- 207 first.

24 Q (By Attorney Fallon) Now, again, 207, this is
25 the knife that he drew that we just saw on the,

1 um -- the videotaped interview?

2 A It is. It's the one he said that they used to cut
3 her throat and stab her.

4 Q All right.

5 ATTORNEY FALLON: Um, 209,
6 Mr. Fassbender, please? All right. You might
7 have to zoom out a little on that. All right.

8 Q (By Attorney Fallon) And 209, this is the
9 depiction of the garage?

10 A It is. And if I could elaborate a little bit about
11 that one?

12 Q Yeah. I have -- I have a few questions if I may?

13 A Okay.

14 Q Um, there seems to be, uh, depicted in there, um,
15 a, uh, stick person. What is represented by that
16 depiction?

17 A That's where Brendan stated when they took her out of
18 the back of the RAV 4, where they placed her on the
19 ground, and that's where they shot her. The thing
20 about that one is he places her -- If -- if you
21 compare this drawing to things you might have seen
22 earlier in the trial, where we believed that there
23 was a luminol stain -- or the stain -- excuse me --
24 the luminol showed a stain which we believed to be
25 bleach, which he later said he had cleaned up in the

1 garage, is exactly where that luminol lit up.

2 Q All right. And I see initials. There's two X's

3 with initials. One is B. R. D; what is that

4 supposed to represent?

5 A I had Brendan label where he was standing. And I had

6 him label where Steve was standing when, uh, he shot

7 her.

8 Q All right. And is that the -- the, um -- the "X"

9 which is depicted below the lettering B. R. D.?

10 A That is correct. Yes.

11 Q And that's supposed to be an S. A.? Is that what

12 it -- that is?

13 A Yes.

14 Q All right. And, um, there is a little box, um,

15 above three circles. There's three circles

16 between the -- the stick person depiction, and

17 then there's, uh, a box above that. What is

18 that?

19 A That's where -- If you remember in the pictures,

20 there was a -- I believe it's a John Deere lawnmower

21 sitting.

22 Q All right. And what were the three circles that

23 are sup -- uh, supposedly, uh, depicted between

24 the stick person and the lawnmower?

25 A I believe that's where he's drawing the blood.

1 Q All right. And, um, just so that we're clear, is
2 that his handwriting which appears on the
3 right-hand of the screen?

4 A It is.

5 Q All right. Next. We are now publishing 210. I
6 believe you indicated this was, um, uh, the burn
7 pit?

8 A Correct. If you see, he actually drew the mound in.
9 And if you remember the actual pictures, there's a
10 gravel and dirt mound built up there. And I believe
11 that's what he was drawing there.

12 Q I'm going to have my colleague, Mr. Gahn, hand
13 you a laser pointer?

14 A Sure.

15 Q And, uh, as I recall your testimony from a few
16 moments ago, um, there is a, um -- a doghouse
17 that was drawn in?

18 A Right. He's got the doghouse drawn in right here.
19 And here's that mound I was talking about. If you
20 remember back on the pictures, that was a gravel and
21 dirt mound.

22 Q Right.

23 A And here was that dugout impression.

24 Q All right. And what is depicted in that
25 depression?

1 A He drew in where they put Teresa. And that's exactly
2 where the bones were found. It was within this area
3 here.

4 Q All right.

5 ATTORNEY FALLON: Um, next one,
6 Mr. Fassbender. Exhibit 208, I believe it is.
7 If you'd zoom out just a bit. All right.

8 Q (By Attorney Fallon) What is depicted in Exhibit
9 208?

10 A That would be, uh, Steve Avery's bedroom, which he
11 drew for us.

12 Q All right. And, um, there are a number of, uh,
13 items. Specifically, um, there is a bed, which
14 is depicted there?

15 A Yeah. He drew the bed in right here.

16 Q And -- And what is represented or depicted in the
17 drawing on the bed?

18 A He actually drew Teresa in on the bed. And you can
19 see the chains or handcuffs that are attached to her
20 legs and her arms.

21 Q All right. Now, what was significant about the,
22 um, layout of the bedroom, vis-a-vis, the, um,
23 investigative, um, beliefs, initially, when this
24 case broke, and, subsequently, what did you learn
25 about it?

1 A Well, when we served the search warrants on the, uh,
2 trailer, we found the bed right here. Okay? The gun
3 rack is on the wall. There's actually pictures. If
4 you remember that? You see the gun rack? And the
5 bed was here. The door is actually here to the
6 bedroom.

7 When we interviewed Brendan, he had
8 stated that you could see now -- you could see
9 Teresa from looking down that hallway. And we
10 initially thought, well, how can that be?
11 Because if the bed is here, there's no way you
12 could see Teresa on that bed from looking down
13 the hallway, when he says he just walks in the
14 house and he looks down there.

15 Q Let -- let -- let -- Let me stop you right there.
16 Um, when you executed the search warrant on
17 November 5, are you telling us the bed was under
18 the gun rack?

19 A Yes.

20 Q All right. Continue.

21 A The bed was under this gun rack when we executed the
22 search warrant. So when Brendan tells us that the
23 bed is over here -- Or, actually, Brendan told us he
24 could see her. So we ask him, well, draw the bed in.
25 So he draws it in here without any prompting or

1 telling him where anything was in that room.

2 When we eventually talked to Steve
3 Avery's girlfriend, fiancé as she put it
4 yesterday, she also puts the bed here. So,
5 now -- Well, obviously, when you walk in that
6 door to that trailer, and you look down that
7 hallway in this doorway, he's right. You could
8 see it.

9 Q All right. Now, um, there's been some, uh,
10 testimony, uh, of assistance rendered to the
11 investigation by a state trooper by the name of
12 Timothy Austin. I think, um, there was a
13 stipulation regarding some of his animation, and
14 I believe Dr. Eisenberg, um, testified that he
15 assisted her. Um, as a result of the information
16 provided by Jodi Stachowski and, um, the
17 defendant, Brendan Dassey, did you ask him to do
18 anything?

19 A Yes. We asked, um, Trooper Austin to see if that was
20 feasibly possible. If that bed would fit in that
21 area. So he did that.

22 Q All right. I'm going to show you, um, a -- a
23 photograph. I'm having my colleague show you
24 what has been marked for identification as
25 Exhibit 211?

1 A Yes.

2 Q Did you recognize that?

3 A I do.

4 Q What is Exhibit 211?

5 A Two-eleven is a rendering, um, based off of
6 information that we learned in this case of how a
7 bedroom was the day that Teresa was -- that we
8 believe that Teresa was in there.

9 Q All right. Yes. I'm going to have my, uh,
10 colleague hand that for publication. All right.
11 Exhibit 211 is, uh, depicted, and, uh, tell us
12 about that? Illustrate, first of all, where the
13 doorway to the room is.

14 A Sure. The door is right here. And here's that exit
15 door to go outside, um, the one that Brendan talked
16 about, and the cement steps was right there by the
17 bedroom. Um, the garage would be, basically, right
18 over here. And this is the bed drawn in here. Um,
19 the little desk. I think it's like a two-file --
20 two-drawer file cabinet there that he had in the
21 room. Uh, the bookcase. And you see on the wall
22 here is the gun rack.

23 Q All right. And, um, did you commission, uh,
24 Trooper Austin to do one other animation --
25 animated still for your investigation?

1 A Yes, we did.

2 Q All right. I'm showing you now what has been
3 marked for identification as Exhibit 212. What
4 is depicted in, uh, Exhibit 212?

5 A Again, this is, um, Steve's garage. Um, as you can
6 see, the big garage door here. The small entry door
7 of the garage. Some of the important things in this
8 rendering would be that John Deere lawnmower that we
9 talked about that he had drawn in, which is right
10 there. And, if you remember, he got the, uh --
11 actually, the RAV 4 in here, too, backed in, which
12 fits very well.

13 Q All right. Now, just so that we're clear, um,
14 there appears to be, um, uh, significantly less
15 clutter in the photo than in the original
16 photograph of that garage; is that correct?

17 A Yes.

18 Q And was that, uh, specifically requested of
19 Trooper Austin?

20 A It was.

21 Q And, uh, was that to just facilitate the general
22 layout of the garage?

23 A Yes.

24 Q All right. And, um, do you believe that to be a
25 representative portrayal of the information

1 provided by the defendant?

2 A Yes, I do.

3 Q All right. Um, Investigator Wiegert, um, for the
4 record, then, what was the address of Steven
5 Avery's trailer and garage?

6 A Um, 12932 Avery Road, Town of Gibson, Manitowoc
7 County, Wisconsin.

8 Q And is that the location where the defendant
9 attributed these events occurred?

10 A It is.

11 ATTORNEY FALLON: I have no further
12 questions for this witness. Would move into
13 evidence Exhibits, uh, 207, 208, 209, 210, 211,
14 212, and, uh, I've -- I've forgotten the exhibit
15 number for the DVD of the, uh, interview, but we
16 would move that in as well.

17 THE COURT: I don't think there is a number
18 for it, but there is one for the waiver of rights.
19 The 206.

20 ATTORNEY FALLON: And 206.

21 THE COURT: So we'll mark the DVD. That
22 would be 213. You're asking that that be --

23 ATTORNEY FALLON: Yes.

24 THE COURT: You're offering it?

25 ATTORNEY FALLON: I would offer that as

1 the official record.

2 THE COURT: All right. Mr. Fremgen, any
3 objections to any of those?

4 ATTORNEY FREMGEN: No.

5 THE COURT: Then, uh, Exhibits, uh, 206
6 through, and including, 213, which is going to be
7 marked right now, the CD, are received.

8 ATTORNEY FALLON: I think it's a DVD.

9 THE COURT: I -- I'm sorry. DVD. Yes.

10 ATTORNEY FALLON: You have that, Ms.

11 Clerk?

12 THE CLERK: Not yet.

13 ATTORNEY FALLON: Not yet? All right.

14 THE CLERK: I just have a sticker for
15 it.

16 ATTORNEY FALLON: All right. We'll --
17 we'll produce that before the end of the day.
18 Uh, with receipt of those exhibits, we would
19 tender the witness for, uh, cross-examination.

20 THE COURT: Cross?

21 ATTORNEY EDELSTEIN: Your Honor, prior
22 to commencing cross, could we take our afternoon
23 break? There's a number of exhibits I need to
24 gather up.

25 THE COURT: All right. We'll break until

1 quarter to three.

2 ATTORNEY FALLON: Very well. Thank you.

3 (Recess had at 2:26 p.m.)

4 (Reconvened at 2:47 p.m.)

5 THE COURT: Cross.

6 ATTORNEY EDELSTEIN: Thank you, Your
7 Honor.

8 CROSS-EXAMINATION

9 BY ATTORNEY EDELSTEIN:

10 Q Officer Wiegert, you covered a lot of ground, so
11 bear with me if I jump around a little bit?

12 A Yes, sir.

13 Q You've been with Calumet for 14 years; right?

14 A Yes.

15 Q And you are now classified as an investigator I
16 believe you said?

17 A That's correct.

18 Q That any different than a detective?

19 A Same thing. Different name.

20 Q Than the -- So you're involved with more, shall
21 we say, investigative duties from events, as
22 opposed to day-to-day responding to calls, uh,
23 taking reports, things like that?

24 A Yes. That's true.

25 Q All right. Now, you established early on that

1 yourself and Fassbender became what you've been
2 characterizing as the lead investigators into the
3 disappearance of Teresa Halbach; right?

4 A Yes.

5 Q Okay. Was there -- And I take it there was no
6 particular hierarchy, even though he's a state
7 employee and you're a county employee?

8 A Considered my partner.

9 Q All right. So the two of you are working
10 together on this thing throughout -- from the
11 beginning through today, basically?

12 A Yes.

13 Q Okay. If you got a piece of information, you
14 shared it with him, and vice-versa?

15 A When I could.

16 Q What, if anything, would have prevented you from
17 sharing the information?

18 A There's a lot of information in this case and I
19 believe we shared as much as we could together.

20 Q Just in fairness, though, uh, you did your very
21 best to make sure that he knew what you knew, and
22 you knew what he did?

23 A We did our best.

24 Q All right. Now, I believe you began your
25 testimony yesterday talking about, uh, Kayla;

1 right?

2 A Yes.

3 Q And you went to Kayla because you received some
4 information that she might have known something
5 about, um, Brendan losing some weight; right?

6 A Um, which time?

7 Q On the 20th? Well, let me ask it to you this
8 way: What was the first date you talked to
9 Kayla?

10 A Yes. February 20. That's not -- Let me answer your
11 first question. That's not the reason we talked to
12 Kayla, initially, no.

13 Q When you talked to Kayla on the 20th, I
14 understood your testimony to -- to be based upon
15 the fact that you'd received some information
16 from someone, and you didn't say who, that you
17 needed to talk to Kayla. That she had some
18 information?

19 A We talked to Kayla -- She had information, um, about
20 Steven Avery, not about Brendan losing weight, as you
21 said.

22 Q But in any event, when you were there, you had
23 spoke to her, and she -- uh, you testified she
24 told you that he lost about 40 pounds; right?

25 A Yes.

1 Q Okay. Had you -- You had never met Brendan
2 Dassey as of the 20th of February, had you?
3 A No, I had not.
4 Q You didn't know how old he was?
5 A As of the 20th -- I -- I knew he was a teenager.
6 I -- As to his exact age, no, I don't think I knew
7 his exact age.
8 Q You really didn't know -- Did you know where he
9 went to school?
10 A Well, I assumed where he went to school in Mishicot
11 from where he lived.
12 Q Okay. But you hadn't check with the school to
13 verify he was a student there?
14 A On the 20th. Um, I don't recall if I would have by
15 then or not. I don't think so.
16 Q Okay.
17 A But I'm not sure.
18 Q I'm going to hand you for the record what has
19 been admitted as 163?
20 A Yes.
21 Q And you're familiar with that; right?
22 A I am. Yes.
23 Q And for the record and the benefit of the jury,
24 what is it?
25 A Um, it's the statement in which we talked about, I

1 believe, yesterday that, uh, Kayla Avery had wrote,
2 on, uh, the 7th of March.

3 Q Okay. And that was after you had gone back to
4 talk with her; right?

5 A That was after the school had contacted us.

6 Q Right. Okay. Now, the 7th of March, in relation
7 to the lengthy interview that everybody just saw
8 between you and Fassbender and Brendan, was six
9 days later; right?

10 A Yes.

11 Q Okay. And isn't it a fact that on the 1st day of
12 March, you, Fassbender, members of the
13 prosecution team, held a widely publicized press
14 conference?

15 A There was a press conference, yes.

16 Q And is it fair to characterize that as a press
17 conference stating that Brendan Dassey has
18 confessed to his involvement in the disappearance
19 of Teresa Halbach?

20 A I believe that would be accurate.

21 Q I believe you testified on direct with respect to
22 the interview of March 7, and correct me if this
23 is not what you said, that after he saw Teresa
24 Halbach pinned up in the bedroom, he heard
25 screaming in the bedroom. Do you remember that

1 testimony?

2 A After he? After -- This is after Brendan, are you
3 talking about? I'm sorry.

4 Q Right. As related to you by -- by Kayla?

5 A Um, I believe that's correct.

6 Q You do not?

7 A No. I believe that's correct.

8 Q Okay. When you talked with Kayla, she led you to
9 believe that there was a chair involved in some
10 sort of restraint with Teresa; right?

11 A According to Kayla, that Brendan had told Kayla that
12 Teresa was pinned up in a chair.

13 Q And when does she claim that Brendan told her
14 that?

15 A Um, according to my recollection, she claims it was
16 in December of '05, because she remembers it because
17 there was a birthday party at her house.

18 Q Right. And you got that information from her
19 when?

20 A We got that information in March.

21 Q Well -- And that would be related in 163?

22 A Yes. That's correct.

23 Q Okay. So in March, about six days after this
24 press conference, she's telling you that the
25 defendant said Teresa was pinned up in a chair?

1 A After the school calls us and tells us that they had
2 learned about information about this homicide --

3 Q Officer --

4 ATTORNEY EDELSTEIN: With the Court
5 permission.

6 Q (By Attorney Edelstein) I don't mean to quibble.
7 I didn't ask about the school. My question was,
8 six days after the interview -- six days after
9 the press conference, that's when Kayla tells you
10 that the defendant claimed that Teresa had been
11 pinned up in a chair; correct or not?

12 A Yes. That's correct.

13 Q All right. And it is true, is it not, that even
14 through this lengthy video, at no time did
15 Brendan ever claim that Teresa was pinned up in a
16 chair; yes or no?

17 A No.

18 Q He did not?

19 A In a chair, no.

20 Q So that would be an inconsistency in his
21 statements; correct?

22 ATTORNEY FALLON: Objection.

23 THE COURT: To foundation, uh, the
24 objection is sustained. Why don't you make that
25 clearer, please?

1 Q The statement you got from Kayla reporting what
2 Brendan told you, you got it from her? You
3 didn't take that as a statement, so to speak, of
4 Brendan?

5 A I took it as what Brendan told Kayla.

6 Q Exactly.

7 A His statement.

8 Q All right. But then based upon what he told you,
9 as far as this pinning up business, that would
10 not match; correct?

11 A No. I wouldn't agree with that.

12 Q Does it match to the extent that he described it
13 pinning up in a chair?

14 A Um, the chair is different. Um, but she was pinned
15 up.

16 Q Now, when you talk about the pinning up, I assume
17 you're saying there's some consistency, uh,
18 because of his statement to you in this 3/1
19 statement that he saw Teresa, um, tied up or
20 restrained on the bed; right?

21 A Yes.

22 Q Okay. Let's talk about the bed real quick. For
23 the record, I'm going to hand you what's been
24 marked as 211, which is the Austin photograph,
25 computer-generated depiction, of the bedroom of

1 Steve Avery; right?

2 A Yes.

3 Q And you testified that he prepared that based
4 upon the drawing that, uh, Brendan provided to
5 you during the course of the 3/1 interview;
6 right?

7 A No, that's not true.

8 Q It's not?

9 A No.

10 Q Okay. What is 208?

11 A Two-0-eight is Brendan's drawing.

12 Q Okay. And that's how he claims the bedroom was
13 on October 31; right?

14 A Yes.

15 Q Well, help me out then. Two-eleven, that Austin
16 prepared, what is this based on? Is this not
17 based on what Brendan was telling you?

18 A I believe what I testified to is that it was based on
19 statements by Brendan and, uh, Steve Avery's fiancé,
20 Jodi Stachowski.

21 Q Okay. But it was supposed to depict the
22 condition of the Steve Avery bedroom as of
23 October 31; correct?

24 A That is correct.

25 Q All right. Now, I'm going to leave you this one.

1 A Sure.

2 Q All right. You see on the exhibit, and it's No.

3 208, that's up on the ELMO, it shows where the

4 closet is in that bedroom; right?

5 A Yep.

6 Q Okay. Now, this Austin one also shows the

7 closet; correct?

8 A Yes.

9 Q Okay. As I'm holding it, oriented up, so to

10 speak, for the benefit of the record, just like

11 in this one with the closet, or in the up

12 portion; correct?

13 A Sure.

14 Q This should be the same; right?

15 A This should be the same --

16 Q Well, the Austin rendition, and what Brendan

17 drew, because you believe that to be the

18 configuration on the 31st, should be the same?

19 A That's -- As I stated before, that's based on, not

20 only Brendan, but from Jodi Stachowski.

21 Q I understand that. But they, in any event,

22 should be the same; right?

23 A No. That's based on two people's statements.

24 Q Well, if we look at the Austin rendition, you

25 have the bed in the furthest possible corner -- I

1 don't know if that's north, south, east, or west.
2 Where's your laser pointer?
3 A Right here.
4 Q On the Austin rendition, this bed is actually up
5 against this wall; right?
6 A That's true. Um-hmm.
7 Q Okay. And in Brendan's, the bed is not up
8 against the wall; correct?
9 A Right. It's moved out a few feet.
10 Q Okay.
11 A On the same wall.
12 Q On the same wall as to the head side, so to
13 speak?
14 A Yes.
15 Q But not the left side; right?
16 A That's correct. Um-hmm.
17 Q Okay. And on Brendan's -- I don't want to get
18 the clerk -- And on Brendan's, he has some
19 furniture off to the left side of the bed; right?
20 A That is true.
21 Q But when you had Austin prepare this one, you
22 have that furniture off on this side?
23 A Again, that's a culmination of Jodi Stachowski's and
24 Brendan's statements are represented there.
25 Q I understand that. But when you testified

1 earlier, you bel -- you based -- you asked Austin
2 to prepare this based upon what both of them told
3 you?
4 A That is true.
5 Q Are there inconsistencies between Exhibit 208, as
6 prepared for you at your request by Brendan
7 Dassey on the 1st, and Exhibit 211 that you asked
8 Austin to prepare?
9 A Sure. Yeah.
10 Q When, and if you can, give me a date, did Brendan
11 Dassey become a suspect in a criminal offense in
12 your mind?
13 A Well, there were a lot of suspects. I mean, Brendan
14 Dassey --
15 Q Detective, again, I don't mean to quibble with
16 you. I didn't ask about a lot of other suspects.
17 I don't care about other suspects. I want to
18 know, in your mind, when Brendan Dassey became a
19 suspect in a criminal offense?
20 A Probably in March.
21 Q What day in March?
22 A The day that he told us that he killed, raped, and
23 mutilated Teresa Halbach.
24 Q Okay. And that was?
25 A That was March 1.

1 Q All right. You had talked earlier on direct, for
2 the benefit of, uh, educating those folks who are
3 not familiar with the criminal investigation
4 process, about the differences, a little bit,
5 between, I think you called it an interview, and
6 an interrogation; right?

7 A I talked earlier about that?

8 Q I believe you did. Maybe not today. I think it
9 might have been yesterday.

10 A I don't recall talking about it today. That's why
11 I'm asking. But I'll take your word for it.

12 Q Well, even if it wasn't yesterday?

13 A Sure.

14 Q There is a difference; right?

15 A Sure.

16 Q All right. You -- you interview, um, witnesses,
17 you interrogate suspects; right?

18 A Not necessarily. But there's -- there's not a fine
19 line. You're -- you're looking to draw a fine line.
20 There's really not that fine line.

21 Q Well, you knew, as one of the lead investigators,
22 that Skorlinski, Baldwin, and O'Neill had already
23 spoken with Brendan up in Marinette County;
24 right?

25 A That's true. Yes.

1 Q And, certainly, by the 1st of March, you had
2 received, uh, fairly detailed information from
3 them, perhaps including a transcript made from
4 the little recording device up in O'Neill's car;
5 right?

6 A I did not receive the transcript by March 1, but I
7 did have a chance to review reports.

8 Q Okay. So you had, basically, a summary of what
9 it was about?

10 A Sure.

11 Q And if I'm guessing correctly, you talked with
12 Skorlinski, or maybe Fassbender did, and you got
13 the same information?

14 A I did not talk to Skorlinski.

15 Q Did Fassbender, to your knowledge?

16 A You'd have to ask him that.

17 Q Okay. We can do that.

18 A Sure.

19 Q You also testified about that you and Agent
20 Fassbender had spoken with Brendan on the 27th of
21 March? I'm sorry. February?

22 A Yes.

23 Q And that occurred on, actually, two different
24 locations? Three different locations on the
25 27th? Am I correct?

1 A Yes.

2 ATTORNEY FALLON: Excuse me, Your Honor,
3 um, may Counsel and I approach?

4 THE COURT: You may.

5 (Discussion off the record.)

6 THE COURT: We'll excuse the jury at this
7 point for a few minutes.

8 (Jurors out at 3:09 p.m.)

9 THE COURT: All right. Be seated. Uh,
10 Mr. Fallon, you're anticipating, apparently, some
11 questions that you may or may not find
12 objectionable. Can we -- Can we ask you what it is
13 that you, perhaps, will find objectionable and see,
14 indeed, if those are going to be asked?

15 ATTORNEY FALLON: Yes. Thank you,
16 Judge, for this, uh, consideration. Um, our
17 concern is simply this, um, we would object to
18 any attempt by the defense to introduce other,
19 um, statements, arguably exculpatory, uh, given
20 by the client, because the law is quite clear
21 that only the party opponent may offer a
22 statement of the opposing party, and, as such, we
23 would object as being hearsay to the introduction
24 of those statements.

25 Now, having said that, we recognized we

1 at least alerted everyone, and the jury, so that
2 they would have a better understanding of the
3 March 1 statement, that the officers had, in
4 fact, talked to Mr. Dassey on three occasions on
5 February 27. Um, only one of those interviews
6 was fully disclosed and testified to by Agent
7 Fassbender.

8 So we don't have any objection to the
9 defense asking general questions about you -- you
10 talked to him on this day, and -- and things of
11 that matter. That's certainly fair game. But
12 any attempts to actually introduce the statements
13 or the responses, uh, is hearsay, because it's
14 not offered by a party opponent.

15 THE COURT: Mr. Fremgen or Mr. Edelstein,
16 your response?

17 ATTORNEY FREMGEN: Judge, essentially,
18 what we're, um, attempting to do is respond to
19 what's already been somewhat opened by the State
20 in their direct. The State referenced
21 speaking -- or the witness reference --
22 referenced speaking with the defendant at
23 Mishicot High School on the 27th of February. I
24 believe he actually testified that, uh, he took
25 an audiotaped in -- statement, not unlike the

1 November 5 interview in Marinette, and that he
2 even referenced the videotaped statement at Two
3 Rivers Police Station.

4 Um, the witness was asked if he felt
5 that Mr. Dassey had said everything he knew, and
6 the witness said, no. And it -- Let me, I don't
7 know, give a couple more examples and I'll,
8 essentially, wrap it up.

9 Um, as -- The inference by the testimony
10 to the officer is that Mr. Dassey was not
11 truthful to them on the previous, uh, attempts to
12 interview him or left things out.

13 For instance, the officer, specifically,
14 testified that the defendant denied being
15 involved in the offense on February 27. The
16 officer indicated that he was con -- Well, I
17 don't know if he said he was confident, but I
18 think his testimony was, essentially, I didn't
19 believe him. I think he was more involved than
20 he was leading on.

21 In the May -- or the March 1 statement,
22 or the video statement, there's references to
23 specific questions or specific answers from the
24 previous interviewers. For instance, um -- I
25 believe the two pages I wrote down were page 556

1 of the transcript, and page 5 -- or page 604.

2 One dealing with, um, the clothing, the color of
3 the clothing, and the other, for -- I believe the
4 officer said, well, on Monday you didn't say
5 anything about threats from Steven.

6 So, essentially, what -- on direct, and
7 through the March 1 video, the State has offered
8 the fact that there had been two prior, more
9 formalized, statements, other than the one that,
10 uh -- that, uh, Agent Fassbender testified about
11 at the Fox River's Resort, um, later in the
12 evening, and there's been reference that these
13 statements were not entirely accurate, raising
14 the question of whether or not Mr. Dassey was
15 truthful with them.

16 And I think what -- what it does is,
17 essentially, leaves the jury with the -- with
18 questions about the February 27 statements. I
19 believe that we should be entitled to explore
20 this avenue, sin -- since the State has opened
21 the door, to offer a full explanation about the
22 February 27 statement and why they were further
23 discussing with the March 1.

24 Otherwise, it's left -- Well,
25 essentially, what's left is the State's been

1 allowed to let the officer explain his role, the
2 prior taped statements, or questioning, and offer
3 his opinion about the prior taped statements,
4 even though the best evidence is the actual
5 statements, themselves.

6 So I -- I think we should be allowed to
7 explore that, uh, for lack of a better argument,
8 or back of a letter term, excuse me, that the
9 State's opened that avenue or opened the door to
10 those questions.

11 THE COURT: Well, other than the -- the,
12 uh, remarks that you cite on page 556 and 604, are
13 you suggesting that there are other statements that
14 you wish to discuss?

15 ATTORNEY FREMGEN: Well, the general
16 tone of the March 1 is that you weren't telling
17 us the truth before. That was the testimony of
18 the officer on direct. We weren't getting the
19 truth from Mr. Dassey. He wasn't telling us
20 everything. He was leaving things out. But
21 the -- In essence, he's saying now, March 1 is
22 the truth. Well, I think we should be allowed to
23 explore those prior statements. What was left
24 out? Why do you have the impression that
25 something was missing? And I think part of

1 that's going to be there were different stories
2 or different, uh, answers to the same types of
3 questions on March 1.

4 THE COURT: Mr. Fallon?

5 ATTORNEY EDELSTEIN: Your Honor, if I
6 might add, just for the record, additionally,
7 there was testimony -- uh, this jury was led to
8 believe by the testimony that there were no
9 promises made to Brendan. Now, I believe we're
10 entitled to question whether or not there were
11 promises made to him at any other interviews,
12 including the 27th of March.

13 ATTORNEY FREMGEN: February.

14 ATTORNEY EDELSTEIN: Or, I'm sorry,
15 February.

16 ATTORNEY FALLON: All right. I have
17 now -- Now I have even more responses to make,
18 both legally and practically. Let's start with
19 the, um -- the trees, and then we'll move to the
20 forest.

21 First, as, um, the March 1 interview
22 revealed, the actual questions we previously
23 referred to are identified and discussed in the
24 interview, and this officer can be questioned
25 about those specific responses on March 1. So

1 that's one.

2 All right. Number two, um, when it
3 comes to admissibility of statements, whether
4 they're custodial or otherwise, the statements
5 are taken at face value at the time and place in
6 which they are given.

7 I'll give you an example. There's a
8 case out of Racine called **State v. Pischke**,
9 P-i-s-c-h-k-e, that deals with, um, um,
10 re-interrogation of a custodial suspect. I cite
11 that case just for one distinct proposition,
12 because if the proposition holds in that
13 circumstance, it clearly applies in this
14 circumstance.

15 And in **Pischke** there was a series of
16 custodial interrogations. The defense objected
17 because on the last interrogation the defendant,
18 um, confessed. The defendants floated the idea
19 that the State was the grand initiator of all
20 those previous discussions the two days
21 beforehand. And the Court said, that's a great
22 theory, but it doesn't hold water, because it's
23 just about the statement which resulted in the
24 inculpatory events or rendition.

25 I bring that up because that was a

1 gentleman who was in custody, and it was a series
2 of discussions over a two- or three-day period.
3 There might have been -- There were several. And
4 the Court said it was only who initiated the
5 discussion at the time that led to the
6 inculpatory statement in making the determination
7 as to whether this was a proper re-interrogation,
8 and since the defendant in that case had
9 initiated it, it was a proper.

10 I bring that up by analogy here, because
11 we have a two-day time lapse. The March 1
12 statement must be, and should be, analyzed
13 individually as to the events of that day and the
14 circumstances surrounding the giving of that
15 statement.

16 So on that regard, I -- I don't accept,
17 as a proposition offered by the defense, that
18 what occurred on February 27 has much, if
19 anything, to do with any inducements or promises
20 with respect to what occurred on March 1.

21 Now, for the big picture. The forest.
22 The reason behind the rule is to prohibit a -- a,
23 uh, party from getting in an aversion of the
24 events without having to take the stand. And
25 that's why the rule is crafted and structured

1 around. It's an admission by a party opponent.
2 And only the opponent can offer the statements.
3 Thank you.

4 THE COURT: Defense, do you -- do you
5 suggest that Mr. Fallon's characterization of the
6 rule is incorrect?

7 ATTORNEY FREMGEN: I -- I would say that
8 the analogy is incorrect as far as this case is
9 concerned. That -- that **Pischke** analogy that
10 Mr. Fallon presents, essentially, would leave,
11 uh, the State with every opportunity to make one
12 attempt after another to interview an individual
13 until they get what they want, and then just
14 introduce that one statement without any
15 reference to the past, even though, especially in
16 this case, February 27 was certainly a primer to
17 the March 1 statement. In particular, many of
18 the questions, not all, but many of the questions
19 were similar but with different answers.

20 THE COURT: Well, here, I -- we could
21 probably discuss this well into -- well into the
22 night. My understanding of the rule -- And --
23 And one of you cited a case a couple of days ago
24 called **State vs. Pepin** at 110 Wis. 2d 431.
25 And -- And here, in this case, let's be clear,

1 we're not talking about a custodial interrogation
2 on February 27. If I recall, the parties -- And
3 this is -- this predated your involvement,
4 Counsel, in the case. But the parties, uh,
5 stipulated that it was not a custodial
6 interrogation.

7 But, anyway, **Pepin** says that in
8 instances, such as were faced here, that the
9 State has a right to use the inculpatory
10 statements under 9-0-8-0-1 (4b1), I believe is --
11 is the statute, admission by party opponents.
12 But that the -- but that the defense does not
13 have the right to use any exculpatory matter that
14 may appear there unless the exculpatory matter is
15 so entwined with the inculpatory matter that it
16 bears the same trustworthiness or same
17 guarantees.

18 I can't say that in this case. I -- I
19 don't think that -- I don't think that situation,
20 the trustworthiness of the exculpatory statements
21 here, uh, stands out.

22 Thus, I'm going to -- I'm going to
23 grant, uh, uh, the prosecution's motion here.
24 With the exception, I believe, those were the
25 matters on pages 556 and 604, you can go into

1 those if you wish.

2 ATTORNEY EDELSTEIN: Your Honor, uh, if
3 I could just -- before we bring the jury back, I
4 want to make it quite clear that while I don't
5 necessarily agree with the ruling, I can abide to
6 it, uh, as to -- as to answers. But I fully
7 intend to ask this officer about questions he
8 asked this young man on that date. I'll stay
9 away from the answers. I want him to tell this
10 jury whether he asked him certain questions and
11 the manner in which they were asked.

12 This defense -- We are entitled to
13 present our defense. We have raised this as a
14 matter of suggestibility. There -- This
15 interview of the 27th is replete with conscious
16 efforts, I believe, and it's ultimately up to
17 this jury to decide whether or not these officers
18 manipulated and suggested answers to the
19 defendant.

20 Now, maybe they didn't get them on the
21 27th. Maybe they got them later on. But they
22 have to decide that. And I can cite instance
23 af -- And they weren't just generally speaking.
24 They were very specific. Did you have anything
25 to do with Teresa Halbach's um, death? Um, some

1 of the other statements they made. The promises.
2 They've led this jury to believe there's no
3 promises.

4 THE COURT: Well, here -- I --

5 ATTORNEY EDELSTEIN: (Unintelligible.)

6 THE COURT: I -- I get it. I get it.

7 And we'll cross that bridge when we come to it.

8 I've made a ruling. Let's get the jury back in
9 here and let's move on.

10 (Jurors in at 3:24 p.m.)

11 THE COURT: Be seated. Counsel, you may
12 resume.

13 ATTORNEY EDELSTEIN: Thank you.

14 Q (By Attorney Edelstein) Detective Wiegert, on
15 direct you described for the benefit of -- of the
16 State and the jury different techniques, um, that
17 are a common time, oftentimes, employed in the
18 interview of individuals; correct?

19 A Yes.

20 Q All right. One of those you described as the
21 superior knowledge tactic; right?

22 A That's true.

23 Q And one you, um, described in an effort to
24 ultimate -- the goal being to, quote, take
25 defensive layers off; right?

1 A That's true.

2 Q And I believe you used the -- the phrase, to
3 befriend the, uh, interviewee?

4 A Yes.

5 Q All right. So in connection with that, uh, it
6 wouldn't be unusual for you to say or -- say
7 things intended to, uh, have this individual like
8 you?

9 A Yeah. That's the goal.

10 Q And it wouldn't be unusual to say things to have
11 the individual believe you; right?

12 A That's true.

13 Q Okay. Now, again, um, going back to the 27th --
14 Well, before we get to the exhibit, is it fair to
15 say that as part of this process, and I'm
16 speaking of the 27th, that you and your partner
17 utilized a technique by directly appealing to the
18 emotions of Brendan Dassey?

19 A I think that would be fair.

20 Q And you did that how many times, if you know, on
21 the 27th?

22 A I'd have no idea.

23 Q On the 27th, um, there were very distinct lies
24 told to the defendant, were there not?

25 A We'd have told the defendant many untruths. Yes.

1 Q Any idea how many?

2 A No.

3 Q Now, as of November 15, 2005, you knew from
4 Eisenberg, the forensic pathologist, that there
5 were gunshot wounds to the head of Teresa
6 Halbach; correct?

7 A I can't comment on the date without seeing a report
8 with the date on. It was in that time frame. I know
9 that. But the exact date, I don't know.

10 ATTORNEY FALLON: Excuse me. Did -- Did
11 you say two thousand -- November 15, 2005 or
12 2006?

13 ATTORNEY EDELSTEIN: I believe five.

14 THE WITNESS: Well, that would be
15 incorrect, then.

16 Q (By Attorney Edelstein) Prior to speaking with
17 Brendan on the 27th -- Well, let me ask you this:
18 Were you present when the statement was made to
19 Brendan? And it might help you, uh -- I haven't
20 marked this quite yet, but could you take a look
21 at this? And, if you can, tell me if you know
22 what it is? And mark it with whatever the next
23 number is?

24 A Sure. It's a, um, report of the interview from
25 February 27, '06 of Brendan Dassey.

1 Q Okay. Does it also contain a transcript of the
2 reported conversation between yourself,
3 Fassbender, and Brendan?
4 A It does.
5 Q Okay. And, for the record, we'll mark that as
6 215.
7 A Sure.
8 (Exhibit No. 215 marked for identification.)
9 Q And that's, uh, something, I take it, you've had
10 an opportunity to review before?
11 A Yes.
12 Q Directing your attention almost to the bottom of
13 the middle paragraph, if you will, you were --
14 First of all, you were present throughout this
15 entire, um, conversation we'll call it?
16 A Yes.
17 Q Okay. Does it not reflect the statement made in
18 your presence by Agent Fassbender directed toward
19 Brendan Dassey, quote, truthfully, I don't
20 believe Steven intended to kill her. Do you see
21 that? About three lines up from the large middle
22 paragraph?
23 A Sure. Yes.
24 Q Okay. And that was said to him, wasn't it?
25 A Yes, it was.

1 Q Is it fair to say that that was said in
2 connection with an attempt to persuade him that,
3 uh, it was important for him to give you
4 information, and that you and Agent Fassbender
5 didn't really think he did anything wrong, but
6 that some other people might have believed that
7 he did?

8 A I don't really follow your question.

9 Q If you looked a little bit further up there --

10 A Okay.

11 Q -- do you think you -- Just take a little bit
12 here and read that one paragraph so I can ask you
13 my next question. I understand you've had a lot
14 of interviews. It's hard to remember everything.
15 Did you get a chance to look that over?

16 A Sure. Yep. Good.

17 Q Would it be a fair characterization, then, in the
18 early portion of the contact with Brendan that
19 day, that there was an -- an effort on the part
20 of yourself and your partner to convey to him
21 that the two of you didn't necessarily think he'd
22 done anything wrong, but there were some other
23 people talking like he was and you didn't
24 necessarily agree with that?

25 A Is that what we're trying to convey? Yes.

1 Q Yes. All right.

2 A In this paragraph? Sure.

3 Q Yes. In an attempt to gain his trust?

4 A That's what we do at interviewers. Yes.

5 Q And confidence?

6 A That's what we do as interviewers. Yes.

7 Q He was told -- And I'm -- On page 443, about

8 halfway down, you were present when he was told,

9 quote, you have to tell the truth. You have no

10 choice in that. Correct?

11 A That's what it says. Yes.

12 Q All right. In fact, as part of that particular

13 discourse, Agent Fassbender went so far as to

14 say, quote, there's nothing more I'd like to come

15 over and give you a hug because I know you're

16 hurting. Remember that?

17 A Yes. And I think he meant that.

18 Q The very last line in that exchange, it contains

19 a promise, doesn't it?

20 A There's many promises made. Yes.

21 Q So the truth of the matter is, Investigator

22 Wiegert, that on the 1st, when you went to see

23 Brendan, that that was somewhat of a follow-up to

24 the events of the 27th; correct?

25 A Every successive interview that you do, you build off

1 of the previous one. Information that you learned on
2 that one, when you get more information, you build on
3 it.

4 Q All right. And it's not just information, but
5 it's techniques? The techniques vary from
6 interview to interview; correct?

7 A I don't think the techniques varied at all in these
8 interviews. No.

9 Q Well, let me ask you this: Do you rec -- You
10 watched this video with us today; right?

11 A Yes, sir.

12 Q At different times, uh, placement of yourself and
13 Fassbender changes, doesn't it?

14 A No. That's not true. I move over to the couch by
15 Brendan to have some pictures drawn. That's the only
16 time any placement is moved.

17 Q Okay. That's the only reason you went over there
18 by the couch by him?

19 A Yeah. So he could draw pictures.

20 Q Didn't you go over there so you could kind of
21 cozy up to him and give him this? A pat on the
22 back like we saw on the video?

23 A I don't know how I'd have him draw pictures from
24 across the room. I had to go over there and hand him
25 the things.

1 Q Okay. Isn't it true that, as a technique of
2 interrogation, that, uh, you want this subject,
3 so to speak, to be comfortable in your presence?

4 A Certainly is. Yes.

5 Q And that's somewhat of a test when you move in a
6 little bit closer to somebody, isn't it?

7 A Uh, it's not a test. It's a technique that we use,
8 and when we move in on somebody, what that does, it
9 takes them out of their comfort zone. If you saw me
10 in that interview, I got a little closer to him. I
11 put my knee on -- or, excuse me -- hand on his knee.
12 What that does is breaks down barriers, because he's
13 got a barrier up against us.

14 Q Okay.

15 A And when you walk over, and you get close to them,
16 that's what you're doing. That's what you're
17 attempting to do. But that was not -- Pard me. That
18 was not my attempt when I sat on the couch. Earlier,
19 it was, when you saw me go over and put my hand on
20 his knee. Absolutely.

21 Q Well, in addition to his knee, you acknowledge
22 that you patted him on the back; right?

23 A Sure.

24 Q Okay. Before you talked with him on the 27th,
25 did you know anything about his IQ?

1 A What I knew about Brendan Dassey was that he was
2 in --

3 Q Did you know anything about his IQ --

4 A (Unintelligible.)

5 THE COURT: Here. One at a time. Reask
6 the question, please.

7 Q (By Attorney Edelstein) Did you know anything
8 about his IQ as of February 27 when you first
9 spoke with him; yes or no?

10 A About his IQ? No.

11 Q Did you know anything about his memory? Whether
12 it was good? Bad? Poor? You didn't, did you?

13 A No.

14 Q Would you agree with me that throughout the
15 course of the contacts you've had with Brendan,
16 that, oftentimes, he would be asked more than one
17 question at a single time before he was allowed
18 to answer?

19 A In the March interview are you referring to?

20 Q Generally, as to March and February.

21 A I can't give you any specifics. I mean, everybody
22 saw the interview. I'm sure there were those
23 occasions. Sure.

24 Q Directing your attention, um, on page 446.

25 During the course of the contact on the 27th, and

1 I'm looking at the very bottom paragraph --

2 A Um-hmm.

3 Q -- you told him, in part, this will bug you 'til

4 the day you die unless you're honest about it.

5 Right?

6 A Yes. And I still believe that.

7 Q Now, if you would, take a look at from the

8 beginning of where you begin to speak, at the

9 bottom of 446, over to page 447, about halfway

10 down where you see the first entry where it says,

11 Brendan?

12 A Yes.

13 Q All right. Immediately above the reference where

14 it says, Brendan, about halfway down on 447, it

15 is stated to him, I think you're being --

16 starting to be honest with us about some things

17 right now. Correct?

18 A Yes.

19 Q Okay. Okay. From the bottom of 446, where you

20 begin to speak, all the way through the middle of

21 447 when that statement is made, he hasn't said a

22 single word to you, has he?

23 A I think you're taking it a bit out of context. But

24 146, can't question, no, um, he hasn't, but before

25 that, yeah, he has.

1 Q Well, it's fair to say that you guys -- you and
2 Fassbender are doing a lot of talking. He's not
3 saying much; right?

4 A I'd have to review the stuff prior to this. I can't
5 say that right now without reading this over. If
6 you'd like me to, I would.

7 Q No, you don't need to.

8 A Okay.

9 Q Page 448. Do you think it is a promise -- On the
10 first entry by your name, Detective, do you think
11 it's a promise to him when you say, we'll go to
12 bat for you, but you have to be honest with us?

13 A That's absolutely a promise, and I absolutely meant
14 that at the time.

15 Q And you -- Additionally, I take it you would --
16 your answer would be the same, about halfway down
17 on that page, when it is stated to him in your
18 presence by, uh, Agent Fassbender, I promise you,
19 I'll not let you hang out there alone, but we got
20 to have the truth. Right?

21 A My same answer. You bet.

22 Q Okay. On page 451, please? You told him, it's
23 not your fault. Remember that. Correct?

24 A Yes, I did.

25 Q Okay. And up -- And he really hasn't said

1 anything to you at that point, significant, has
2 he?

3 A Again, I won't comment on that unless you want me to
4 read what he said prior to that.

5 Q No, that's fine.

6 A Okay.

7 Q But you acknowledge making that statement, it's
8 not your fault. Right?

9 A I certainly did.

10 Q And then immediately thereafter, Fassbender, uh,
11 follows up without any sort of response from
12 Brendan, yeah, it's not your fault. Like I said,
13 Mark and I are not going to leave you high and
14 dry. Right?

15 A Again, I said it, and I meant it.

16 Q Well, did you -- You didn't say it, Fassbender
17 said it?

18 A Things before when I said, it's not your fault. If I
19 said it, I meant it.

20 Q Right. And you acknowledge that prior to Brendan
21 even responding in any way, shape, or form, or
22 being asked for a response, it's -- your
23 statement is immediately followed up by
24 Fassbender reiterating that very thought, that
25 it's not his fault. That he hasn't done anything

1 wrong. Right?

2 A Are you saying that's what he says after me? Yeah,
3 that's what he says after.

4 Q Okay.

5 A Certainly.

6 Q And further down, is it not, the -- the question
7 is given to him, quote, what other parts did you
8 see? Right?

9 A Yep.

10 Q And isn't it true that at no time, prior to that
11 statement being made to him, did he acknowledge
12 seeing any parts?

13 A Again, I won't comment on them unless you want me to
14 read everything prior to this. But right after that,
15 he says, toes. He saw toes.

16 ATTORNEY EDELSTEIN: Begging the Court's
17 indulgence, in order to have the witness answer
18 my question, I would ask that he be given an
19 opportunity to review this in order to answer
20 that question.

21 THE COURT: Review what?

22 ATTORNEY EDELSTEIN: Pard me?

23 THE COURT: Review what?

24 ATTORNEY EDELSTEIN: The witness
25 indicated he would like an opportunity to re --

1 review the portion of the exhibit before him,
2 prior to that statement being made to him on page
3 450 -- to my client on 451, in order to answer
4 the question. The question being: He had not,
5 prior to you making that statement, indicated he
6 saw any parts?

7 THE COURT: So you want him to read the
8 12 pages before that?

9 ATTORNEY EDELSTEIN: If that's the only
10 way he can answer the question.

11 ATTORNEY FALLON: Your Honor, uh, if I
12 may, I guess I'm going to object. It's not that
13 I have any objection to the officer reviewing the
14 report, or whatever. I'm going to go back to
15 the -- to an earlier point and -- and I fail to
16 see the relevance of -- of the events two days
17 before as it pertains to this particular, um,
18 cross-examination, uh, vis-a-vis, the inculpatory
19 statement obtained on March 1. I mean, that's
20 two days earlier. It's of marginal relevance.
21 That's my concern. I don't have any -- The
22 officer can read it if he wishes. That's fine.

23 THE COURT: Yeah. Well --

24 ATTORNEY FALLON: It seems cumulative.

25 THE COURT: And it may well be cumulative.

1 I think -- I think it passes the relevance test,
2 and -- and I'm going to overrule your objection.
3 I -- I don't want to be in a position where every
4 time an answer is given that we're going back and
5 rereading things because we're going to be here all
6 night. I'm going to suggest, Counsel, you just
7 proceed. Get the answers that the officer gives and
8 we'll move on from there.

9 ATTORNEY EDELSTEIN: Well, if it's going
10 to assist him to answer the question, he has the
11 materials available, I think, uh, he can refresh
12 his memory with that in order to answer the
13 question.

14 THE WITNESS: I'll do the best I can.

15 THE COURT: Just ask.

16 Q (By Attorney Edelstein) Isn't it true, and I'm
17 making reference to page 451, that Agent
18 Fassbender, in your presence on the 27th,
19 suggested by asking Brendan Dassey as follows:
20 Okay. A human body. Dot, dot, dot. Isn't it
21 true that prior to that phrase, "a human body",
22 being uttered by Agent Fassbender, that Brendan
23 Dassey never said anything about seeing a human
24 body?

25 A Well, you can't tell from the transcript, because

1 that was the -- looks like the inaudible part of the
2 transcript. So -- I mean, you know as much as what
3 Brendan said as I do. It says, I seen, dot, dot,
4 dot.

5 Q Nowhere does it say, prior to Fassbender making
6 that suggestion in that form of a question, that
7 there was a human body; correct?

8 A He says he sees toes.

9 Q He said he saw toes prior to that, but he did not
10 say he saw a human body; correct?

11 A Again, I can't answer that, because it's -- it's not
12 here. It's on the inaudible part, I believe. I'm
13 assuming it's --

14 Q Do you believe it's on the inaudible part? Do
15 you have a distinct recollection of that? Or is
16 that just a --

17 A Well --

18 Q -- convenience of testimony today?

19 THE COURT: Here. Let him finish the
20 question before you start answering.

21 ATTORNEY FALLON: I -- That's
22 argumentative. I ask that it --

23 THE COURT: Well, it's --

24 ATTORNEY FALLON: -- be stricken.

25 THE COURT: I'm going to let the question

1 stand. Answer it if you can.

2 THE WITNESS: If it's prior to the
3 videotape statement, which I believe it is, which
4 I indicated, when we talked about that statement,
5 that's why we went to Two Rivers, it's an
6 inaudible part, and I believe that's what's meant
7 by the dot, dot, dot.

8 Q But you don't know what's in -- contained in the
9 inaudible part, do you?

10 A No. That's why we did the next videotape statement.

11 Q Well, you're certainly not suggesting that there
12 are significant portions of this statement that
13 we are presently discussing that are inaudible,
14 are you?

15 A Yeah, I am.

16 Q Going to page 453?

17 A Yes.

18 Q Keeping in mind that -- Well, let me ask you
19 this: By the time you got to this part in your
20 contact with Brendan, didn't it occur to you that
21 he had some cognitive limitations?

22 A No. He was a mainstream student at Mishicot High
23 School. He was in Driver's Ed. He could answer
24 questions. He could understand. No. And I think
25 it's evident from watching the prior video --

1 Q Okay.

2 A -- that he can understand.

3 Q I didn't ask you what was evident to you.

4 A I'm not an expert in cognitive abilities, if that's

5 what you're asking.

6 Q I didn't ask you if you were an expert. I just

7 asked you if you believed he had cognitive

8 deficits?

9 A My answer was no.

10 Q All right. On page 453, you asked him, am I

11 correct, would you say yes or no for me, Brendan?

12 You see that?

13 A Uh, just give me -- Yes, I do see that. Yes, sir.

14 Q And without giving the response, is it fair to

15 say that he did exactly what you requested of

16 him? I.e., say yes or no.

17 A No. I asked him a question and he answered the --

18 Q You asked him -- Go ahead.

19 A I asked him, would you say yes or no -- yes or no for

20 me, Brendan? And he says, yes.

21 Q All right. So he did exactly what you asked him

22 to do?

23 A He answered --

24 Q Say yes or no?

25 A -- my question. He answered my question.

1 Q The question was: Would you say yes or no for
2 me, Brendan? Right?

3 A He answers, yes.

4 Q And that's how he answered?

5 A That's how he answered my question.

6 Q Go a little further down there, Detective. Um,
7 the statement was made to him on the 27th --
8 for -- for your convenience, about four lines
9 up -- a portion of it, uh, did you help him put
10 that body in the fire? If you did, it's okay.
11 You acknowledge you made that statement to him?

12 A I did make that statement to him. Yes.

13 Q Were you attempting to persuade him that if, in
14 fact, he did such a thing, i.e. putting a body in
15 a fire, that it was all right?

16 A What you do in an interview, is people --

17 Q I'm not asking for an explanation --

18 A (Unintelligible) -- minimize.

19 Q -- I'm asking for an answer. My question is --

20 A I think I'd have to expound on that answer.

21 ATTORNEY EDELSTEIN: Your Honor, I'm
22 just -- He's entitled to be rehabilitated by --

23 THE COURT: Yeah. Just answer the
24 question, please.

25 THE WITNESS: Could you just ask it

1 again? How you'd like to --

2 ATTORNEY EDELSTEIN: I'm sorry. Could

3 you read it back, please?

4 (Question read back by the reporter.)

5 A Was I attempting to persuade him? Yes.

6 Q (By Attorney Edelstein) All right. Were you

7 attempting to persuade him that what he did was,

8 as you put it, okay?

9 A Yes.

10 Q All right. Now, as a trained investigator with

11 14 is it? 15? I can't --

12 A About 14.

13 Q All right. Fourteen years. You know that's not

14 true; right? Somebody puts a body in a fire,

15 it's not okay?

16 A Right. It's not okay.

17 Q So you acknowledge that that -- you called it

18 deception, I call it a lie. We call it whatever

19 we want. But it's not true, is it?

20 A It's not okay to put a body in a fire. That's true.

21 Q And the statement that you made to him was -- I

22 guess you would characterize it as a deception?

23 A You can call it a lie if you wish.

24 Q I -- I certainly will.

25 A That is true.

1 Q Thank you. Detective Wiegert, uh, as a result of
2 you being lead investigator, along with Agent
3 Fassbender, in this case, you've had an
4 opportunity to be present throughout the
5 proceedings; correct?

6 A Yes.

7 Q Okay. So you've had the benefit of being able to
8 hear what all the other witness of this --
9 witnesses have said prior to your opportunity to
10 testify?

11 A That's correct. I've been here the whole time.

12 Q And you heard Nick Stahlke testify; right?

13 A I did.

14 Q Okay. He's our blood spatter man?

15 A Yes.

16 Q Okay. Had -- Had -- Prior to this case, had you
17 ever been involved in any cases that, uh, might
18 have utilized blood -- blood spatter evidence?

19 A Blood spatter evidence? No.

20 Q Brendan was asked, was he not, on the 27th -- And
21 I'm making reference at 459?

22 A I'm there.

23 Q Okay. About the middle of the page. Question:
24 Did he say anything about shooting her? You
25 asked him that; right?

1 A Yes.

2 Q Okay. And you knew by the time you conducted
3 this interview, interrogation, whatever you want
4 to call it, that there was evidence of a gunshot
5 wound to Teresa Halbach; isn't that true?

6 A That is correct. Yes.

7 Q Is it fair to say that you did not follow up with
8 that particular question, um, and I'm making
9 reference to the shooting her question, anytime
10 soon following the time it was first proposed to
11 him during the course of this interview?

12 ATTORNEY FALLON: Objection. Vague.
13 Indefinite.

14 THE COURT: Well, I have a -- a relevance
15 concern about that. Uh, what -- what --

16 ATTORNEY EDELSTEIN: Well, let me --
17 That was poorly phrased, Your Honor. Let me try
18 it a different way.

19 THE COURT: I agree.

20 Q (By Attorney Edelstein) You knew, based upon
21 your role as one of the co-lead investigators,
22 there was evidence of a gunshot wound on that day
23 when you did the interview?

24 A We learned about it right in that time frame that
25 there was possible gunshot wounds. That's correct.

1 Q All right. Um, but if you would, take a look at
2 459, then?

3 A Yes, sir.

4 Q Just on that page alone, is it correct that there
5 are five questions given to him after your
6 question to him, quote, did he say anything about
7 shooting her?

8 A That would be accurate. Yes.

9 Q Okay. None of them are a follow-up as to having
10 anything to do with a shooting; correct?

11 A That's correct.

12 Q Okay. Page 463, please?

13 A Okay.

14 Q Top third -- I guess everything prior to the
15 first entry for Fassbender. You stated to him,
16 you didn't see it. Did he tell you about it?
17 Correct?

18 A That's the question. Yes.

19 Q All right. Apparently there's no response;
20 right?

21 A Yeah, there's nothing there.

22 Q And then the next entry? Again, it's you
23 speaking to Brendan. No. As in a question. No?
24 Say yes or no. Is that what it says? And is
25 that what you said to him?

1 A That's what it says. A lot of times he would use
2 head yes or no's. That's why that might not be
3 there. But, uh, you're correct in saying that's what
4 I say next, yes.

5 Q And -- and, again, he did exactly what you told
6 him to do, and that is say yes or no, as his next
7 response?

8 A He answered the question I asked, yes.

9 Q Well, it really wasn't a question. It was a
10 command, wasn't it? Say yes or no. That's not a
11 question, is it?

12 A Call it a statement. Sure.

13 Q Pard me?

14 A It's a statement.

15 Q Well, you're telling him to do something, are you
16 not?

17 A Yes.

18 Q And he does, does he not?

19 A He does.

20 Q Okay. On page 463 --

21 ATTORNEY EDELSTEIN: Can you drop down a
22 little bit?

23 Q (By Attorney Edelstein) The question was put to
24 him, did he say where he cut himself? And Agent
25 Fassbender's making reference to Steven Avery;

1 right?

2 A Yes.

3 Q Okay. And then there's no response; right?

4 A That's true.

5 Q Fassbender then suggests --

6 A I need to just back up a little bit. I can't say

7 there's no response. There may be inaudibles. There

8 may have been a response. But there's nothing in the

9 text. You're --

10 Q All right.

11 A -- correct on that.

12 Q Okay. And then Fassbender follows up immediately

13 with -- on the knife that he used to kill her,

14 yes or no. Correct?

15 A Yeah. That's what he says.

16 Q Okay. The next entry being, yeah?

17 A That's correct.

18 Q Do you know whether or not, and can you tell this

19 jury whether or not, the response, yeah, from

20 Brendan was in answer to the Fassbender inquiry,

21 did he say he cut himself? Or whether it was a

22 response to the statement Fassbender makes, on

23 the knife that he used to kill her, yes or no?

24 A I think by reading the transcript you would take away

25 that -- the second question, on the knife that he

1 used to kill her, yes or no. Because directly after
2 that, he says, yeah.

3 Q But that's your interpretation of the transcript
4 where there's no answer by Brendan; right?

5 A I would disagree. I think that's the way the
6 transcript reads.

7 Q Okay. Directing your attention to page 464,
8 please?

9 A Sure.

10 Q About three-quarters of the way down?

11 A Yes.

12 Q Do you see where the question is asked of him,
13 did he say he had a gun with dot, dot, dot?

14 A Um-hmm.

15 Q Okay. Is it correct that there are actually
16 three questions asked of him before he's even
17 given an opportunity to respond?

18 A You mean in that one sentence?

19 Q Not in that one sentence, in the next -- in the
20 next three sentences? The next three entries?
21 Before there's any response? And there is no
22 blank space where you're anticipating a response;
23 right?

24 A That doesn't mean we're not anticipating a response.
25 There's sometimes long pauses. Again, if I could

1 refer back to the statement you saw in there,
2 sometimes it takes him awhile to answer for whatever
3 reason. He's thinking of an answer. And that's not
4 accurately reflected in here.

5 Q Okay. But you don't know what -- whether there
6 was a pause?

7 A I don't know, but I would suspect there was. But I
8 don't know. You're correct.

9 Q Okay. It's not an uncommon technique to pepper
10 an individual with questions? And that -- by
11 that I mean, ask them in rapid succession by the
12 various investigators involved?

13 A It's not a technique that I use.

14 Q On page 466?

15 A Yes, sir.

16 Q You ask the question, did he threaten you?
17 Correct?

18 A Yes.

19 Q Okay. And there is a response irregardless of
20 what it is; correct?

21 A Yes.

22 Q That little exchange, if we confine that to the
23 threats in this particular interview, is it fair
24 to say that the subject is changed by you during
25 the discussion of this issue of threats, and you

1 simply say, go back to the clothes. And that
2 occurs within a matter of three or four
3 questions?

4 A Yes, but he answers the question, so we changed
5 subjects.

6 Q Okay. Well, in regard to that, you never asked
7 him, um -- The question was asked of him, what
8 did he say? Right?

9 A Yes.

10 Q Okay. Um, nobody asked him when that was said;
11 correct?

12 A No.

13 Q Nobody asked him where it was said; correct?

14 A That's correct.

15 Q Were you not interested in knowing that if -- if
16 someone has, in fact, threatened somebody, that
17 it would be important to know when that statement
18 was made?

19 A Well, I think, again, you're taking it out of
20 context. If you see the other interview as well, we
21 asked him that. Where did it happen? What did he
22 say? And even in here --

23 Q I'm talking about this interview.

24 A You're talking about this portion of the interview.

25 Q I'm talking about the interview as a whole.

1 A I think we probably asked him a few times about that.
2 That would be my guess. That's in here. But you're
3 correct. When it says -- He -- he does answer that
4 question and then we move on.

5 Q Is it fair to say that there was not a effort to
6 fully develop that as information, um, at this
7 point in the interview of the 27th?

8 A At this point in the interview, that is fair to say.

9 Q You were more interested in going back to other
10 things that might be more directly related to the
11 disappearance and death of Teresa; correct?

12 A We do move around in the interview. That is correct.

13 Q All right. Well, is that, in fact, the reason
14 that you shifted back to --

15 ATTORNEY FALLON: Your -- Your Honor,
16 I'm going to interpose an objection at this point
17 and ask that we approach.

18 THE COURT: Okay.

19 (Discussion off the record.)

20 THE COURT: You may resume your
21 cross-examination.

22 ATTORNEY EDELSTEIN: Your Honor, if I
23 could have just a -- a minute? I may move onto
24 the, uh, March 1 -- I guess I'm not quite ready
25 to get to March 1, but we're close.

1 Q (By Attorney Edelstein) Later in the day on the
2 27th, I think you said on direct, because there
3 was problems with -- or what you perceived to be
4 problems with the audiotape of the interview at
5 the school, you took him down to, uh, Two Rivers
6 Police Department; right?

7 A That's correct. Yes.

8 Q Can you identify what's been marked as 214,
9 please?

10 A Certainly. That's a, uh -- another **Miranda** Rights
11 form like I explained during the last interview. Uh,
12 this is just another copy of that. Not the same one.
13 This is one that we read to him prior to doing that
14 audio -- excuse me -- videotape statement in Two
15 Rivers.

16 Q All right. Um, this is what you use when you
17 have a criminal suspect, don't you?

18 A Not necessarily true.

19 Q If you had a criminal suspect at a police
20 department, and you're going to question him, are
21 you telling us you're not going to read him this
22 **Miranda** warning?

23 A No. That's not what I said. Yes, I would, if I had
24 a suspect there.

25 Q Okay.

1 A That I intended -- that -- There's some variations,
2 as -- as you know, that go into when you have to read
3 them their **Miranda** and when you don't have to read
4 them the **Miranda**. In this case, if I could explain
5 real quickly, the district attorney requested that we
6 Mirandize him prior to taking that statement. So
7 that's why that was done.

8 Q And the district attorney is your legal adviser;
9 right?

10 A That is true.

11 Q Okay.

12 ATTORNEY EDELSTEIN: Your Honor, I move,
13 uh, 214, please, into --

14 THE COURT: Any -- It's offered. Any
15 objection?

16 ATTORNEY FALLON: No.

17 THE COURT: Received.

18 Q (By Attorney Edelstein) When you went over there
19 to Two Rivers, your intention was pretty much to
20 try to memorialize the type of things that you
21 discussed up at the school?

22 A Yes.

23 Q Okay. Without going into the tedi -- the tedium
24 of, um, question and answers, uh, that may
25 have -- or questions that may have been asked of

1 Brendan at that interview, is it fair to say that
2 it was you, Fassbender, and Brendan?

3 A Yes.

4 Q Okay. And is it also fair to say that some of
5 the same techniques that were employed earlier
6 at, uh, the high school, were utilized, as well,
7 at Two Rivers?

8 A Yes.

9 Q And that would include lies?

10 A Yes.

11 Q And that would include attempts to appeal to his
12 emotions?

13 A Absolutely.

14 Q And it would include attempts to have him give
15 responses based upon leading questions containing
16 facts you believed to be true?

17 A There were some leading questions.

18 Q You can't tell us how many --

19 A No.

20 Q -- with -- without counting them up, I guess.

21 A That would be true.

22 Q Now, at the conclusion of that, is it fair to say
23 that you were still of the opinion that Brendan
24 had not been totally honest with you?

25 A I would say that's a fair statement.

1 Q And I believe you, during the course of that
2 conversation, um, made him understand from time
3 to time that you didn't think he was telling you
4 everything there was to tell?

5 A Yes.

6 Q Ultimately, he, and his mom, and, I believe, uh,
7 was it a brother -- you made arrangements -- you
8 and Fassbender made some arrangements for them to
9 stay up at Fox Hills?

10 A Yes. We had talked about that earlier. We certainly
11 did.

12 Q Okay. And that's a resort in Mishicot?

13 A That's correct.

14 Q Okay. And I believe your testimony was you
15 wanted him to stay up there for, um, con -- You
16 were concerned about his welfare?

17 A There were two reasons, which I had stated, and that
18 was one of the reasons. Yes.

19 Q Okay. And what were your two reasons?

20 A His safety and the integrity of that investigation.

21 Q And isn't it true, Investigator Wiegen, (sic)
22 that another reason was that you were attempting
23 to befriend him and his family?

24 A Had nothing to do with it.

25 Q Okay. Wasn't it true that another reason you

1 wanted him up there was to isolate him?

2 A No. If I wanted to isolate him, his mother and his

3 brother wouldn't be there. No, that was not true.

4 Q The last contact you have with investigators on

5 the 27th was in -- initiated at approximately

6 10:50 p.m. at night; right?

7 A That is true. Yes.

8 Q And what time was the first contact at the

9 school? I think you said about 12:30?

10 A Um, I think it was 12:30, but, uh, we weren't with

11 him the whole time. I mean, we were gone a long time

12 and we came back. Actually, Agent Fassbender came

13 back in the evening.

14 Q When you interviewed Brendan on the 1st, where

15 did that take place?

16 A Uh, as I indicated before, that took place across the

17 courtyard here at Manitowoc County Sheriff's

18 Department.

19 Q Do you know how many times either you or Agent

20 Fassbender, during the course of the interview on

21 March 1, the video one that we all watched here

22 today, suggested to Brendan or told Brendan that

23 he was a liar?

24 A No, I don't know how many times.

25 Q Do you know how many times, after he was told

1 that he was a liar, that he changed his answer in
2 response to that sort of accusation?

3 A No, I don't know how many times.

4 Q But you acknowledge he did?

5 A Um, I would acknowledge that we said that we didn't
6 believe he was telling the truth at certain times.
7 Yeah, I would acknowledge that. Absolutely.

8 Q Well, was he not told --

9 (Exhibit No. 216 marked for identification.)

10 Q (By Attorney Edelstein) Detective, let me hand
11 you what's been marked for identification as 216.
12 Do you recognize that as a transcript of the
13 video interview that you and Agent Fassbender had
14 with Brendan on the 1st?

15 A Yes.

16 Q Same one that we saw earlier; right?

17 A Uh, with a little bit of additional on the front
18 here?

19 Q Yes.

20 A Same one.

21 Q Well, if you would -- Directing your attention to
22 page 540 --

23 A Yes.

24 Q -- do you agree that that's, uh, pretty early in
25 the contact?

1 A Yes.

2 Q Okay. Brendan, on the 1st, in your mind and the
3 mind of Fassbender, is, in fact, a suspect, isn't
4 he? When you conduct this interview, he is a
5 suspect in your mind; yes or no?

6 A No.

7 Q Is that why, on page 540, it was said to him by
8 Fassbender in your presence, I want to assure you
9 that Mark and I are both in your corner. We're
10 on your side?

11 A I'm not sure of the question, but we did say that,
12 yes.

13 Q Okay. Take a look at that middle paragraph.
14 Would it -- Is it a fair characterization and
15 interpretation of what Fassbender says that he is
16 encouraging Brendan to say things that might make
17 Brendan look a little bad in order for him to be
18 believed?

19 A He tells him to tell the whole truth. Don't leave
20 anything out. Don't make anything up.

21 Q We've already had an opportunity to see it. What
22 I'm asking you, is it a fair characterization
23 that the intent of that is to have him say things
24 which implicate himself, and only by doing so
25 would then you and Fassbender believe him?

1 A The intent of an interview, as in this interview, is
2 to get him to tell the truth. That's the intent.

3 Q But it was trick -- It was, in fact, said to him
4 that, and I'm about halfway in the middle of that
5 particular statement to him, even if those
6 statements are against your own interest, you
7 know what I mean, that -- then that makes you
8 might -- it might make you look a little bad, or
9 make you look like you were more involved than
10 you want to be. Uh, it's hard to do, but it's
11 good from the vantage point to say, hey, there's
12 no doubt you're telling the truth.

13 A Yes, that's what was said. Part of breaking down
14 those barriers.

15 Q And isn't the purpose of -- But doesn't that
16 encourage him to say something irregardless of
17 whether it's true or not?

18 A No.

19 Q Because someone in a position of authority is
20 telling him that, if you say something that
21 doesn't help you, then we might believe you.

22 A No, I wouldn't characterize it that way.

23 Q On that same page, he was encouraged once again,
24 quote, okay, you don't have to worry about
25 things. Any idea how many times he was told that

1 during the course of that interview?

2 A No idea.

3 Q Would it surprise you if I were to suggest that

4 it was in excess of 75 times during the course of

5 the interview on the 1st that either you or

6 Fassbender, in one form or another, said

7 something to him suggesting, or directly stating

8 to him, that he was a liar?

9 A I have no idea how many times. And several times we

10 told him we did not believe what he was telling us.

11 Yes.

12 Q Well, directing your attention to page 587?

13 A Five eighty-seven?

14 Q Five eighty-seven.

15 A Yes, sir, I'm there.

16 Q Okay. About middle way down?

17 A Okay.

18 Q Fassbender: It's extremely, extremely important

19 you tell us this for us to believe you. That

20 statement was made to Brendan; right?

21 A Yes.

22 Q He didn't respond. And you immediately said,

23 come on, Brendan, what else? Right?

24 A Yes.

25 Q Okay. Immediately before Fassbender makes the

1 statement how extremely important it is, you're
2 questioning him about her head; correct?

3 A Yes.

4 Q All right. You accused him, during the course of
5 this interview, of shooting Teresa; correct?

6 A Yep. And which he was able to resist every time we
7 accused him.

8 Q Well, the truth of the matter is, you don't know
9 if it's right and you don't know if it's wrong,
10 do you?

11 A Whether or not he shot Teresa?

12 Q Correct.

13 A I know he was there when she was shot. Whether he --
14 I don't --

15 Q Let me stop you there. You know he was there
16 because he told you that; right?

17 A And because of the evidence.

18 Q Well, these are the bleached jeans, Exhibit 58;
19 right?

20 A Uh, that's true. Yes.

21 Q Okay. You got them out of his house?

22 A That's true. Yes.

23 Q He told you they were there?

24 A He did.

25 Q He willingly gave them to you?

1 A Absolutely.

2 Q And he told you that he got bleach on there
3 because he cleaned up some stuff, at Steve's
4 request, in the garage?

5 A That's true.

6 THE COURT: Counsel, why don't you
7 approach, please?

8 ATTORNEY EDELSTEIN: Your Honor, I -- I
9 know it's almost 4:30. I guess I would just
10 have -- I could wrap up for today just real
11 quickly.

12 THE COURT: By 4:30?

13 ATTORNEY EDELSTEIN: By 4:30.

14 THE COURT: Go.

15 Q (By Attorney Edelstein) These jeans, the cuffs,
16 the bullets, the shells, the shovels, the seat,
17 everything that the Government's paraded in here,
18 other than these, which contain what are believed
19 to be bleach spots, which Brendan told you about,
20 none of these items have fingerprints, DNA, or
21 any other scientific evidence connecting Brendan
22 Dassey to the death of Teresa Halbach; yes or no?

23 A That's correct. They had five days to clean up.

24 ATTORNEY EDELSTEIN: No other questions
25 for today, Your Honor.

1 THE COURT: Is this the -- Are -- Can --
2 You concluded your cross-examination?

3 ATTORNEY EDELSTEIN: I doubt it.

4 THE COURT: Are you asking to adjourn today
5 and reconvene tomorrow and continue the
6 cross-examination?

7 ATTORNEY EDELSTEIN: I am, Your Honor.
8 I -- I'll have an opportunity to review tonight,
9 and I should be able to, hopefully, not take as
10 long tomorrow.

11 THE COURT: All right. All right. We
12 will, then, adjourn for today, ladies and gentlemen.
13 We're going to reconvene tomorrow at 8:30, run until
14 noon. I'll give you the same admonition I did
15 before. Please don't speak about this case amongst
16 yourselves, or to anyone else, or anything connected
17 with it. Thank you.

18 (Court stands adjourned at 4:26 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
19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
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23
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25

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF,

JURY TRIAL

TRIAL DAY 6

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** APRIL 21, 2007

11 **BEFORE:** Hon. Jerome L. Fox
12 Circuit Court Judge

13 **APPEARANCES:**

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

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

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

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

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

19 BRENDAN R. DASSEY
20 Defendant
21 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 THE COURT: Morning, ladies and gentlemen,
2 morning counsel. This is, for the record, State vs.
3 Dassey, 06 CF 88. Appearances.

4 ATTORNEY FALLON: Morning, Your Honor.
5 If it please the Court, the State continues in
6 its appearance by Special Prosecutors Ken Kratz,
7 Tom Fallon and Norm Gahn.

8 ATTORNEY FREMGEN: Attorney Mark
9 Fremgen, Attorney Ray Edelstein appear with the
10 defendant in person.

11 THE COURT: I believe, uh, we were
12 crossing -- or -- or, uh, Mr. Edelstein was
13 cross-examining Investigator Wiegert.

14 THE CLERK: You want him to be sworn?

15 THE COURT: Uh, we'll re-swear him,
16 yeah.

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

20 THE CLERK: Please be seated.

21 THE COURT: All right. Proceed.

22 ATTORNEY EDELSTEIN: Thank you, Your
23 Honor.

24 **CROSS-EXAMINATION CONT'D**

25 BY ATTORNEY EDELSTEIN:

1 Q Morning, Detective.

2 A Morning.

3 Q You have before you up there by the witness stand
4 a copy of the 3/1 transcript previously marked,
5 and you'll have to help me out, what sticker
6 number is on that?

7 A Uh, 216.

8 Q Very good. And that's the one that, uh, you've
9 previously identified; correct?

10 A Yes.

11 Q All right. Directing your attention to page 572,
12 please, just generally, Detective Wiegert, can
13 you tell this jury how many times during the
14 course of this some three-hour exchange between
15 you and Fassbender and the defendant did one or
16 the other of you, not speaking of Brendan, of
17 course, suggest to him an answer? Do you know?

18 I don't know that you need to look at
19 the transcripts to answer that one. How many
20 times during the course of the exchange did you
21 or Fassbender suggest an answer to Brendan?

22 A From this page?

23 Q No. During the three-hour interview.

24 A I don't know. I couldn't answer that.

25 Q Would you agree that it was certainly more than

1 20?

2 A No, I wouldn't agree with that unless I counted them

3 up. I have no idea.

4 Q Okay. So you haven't -- When's the last time you

5 actually read through that?

6 A Um, probably three days ago.

7 Q Well, take a look, if you would, at page 572,

8 fourth line down, you tell him, do you not, come

9 on, be honest, you went in that back room. You

10 told him that; didn't you?

11 A Yes, I did.

12 Q Okay. He didn't -- Or the next entry is, tell us

13 now, Brendan. Correct? And that's by

14 Fassbender?

15 A Yes.

16 Q And you followed up before he has any opportunity

17 to say anything, we know you were back there.

18 Correct?

19 A That's part of that superior knowledge which we

20 talked about yesterday.

21 Q Well, is it superior knowledge or is it a flat

22 out lie? Because we've talked about different

23 techniques, lies being one and superior knowledge

24 being another? Correct?

25 A Yes.

1 Q Truth of the matter is, when you talked to him on
2 the 1st, you had, quote, no superior knowledge
3 from a factual standpoint that he was ever even
4 back there; true or false?
5 A Part of Mr. -- That's true. It's --
6 Q All right.
7 A -- telling Mr. Dassey -- or getting Mr. Dassey to
8 think that we had superior knowledge like we talked
9 about.
10 Q Okay. But it's a false statement to him; isn't
11 it?
12 A Yes.
13 Q Okay. Let's talk about that, because you
14 apparently -- you're obviously wanting him to
15 say, yes, I was back there. Correct?
16 A No. I'd like him to tell us the truth whether he was
17 back there or not.
18 Q Well, within the -- the short frame of three
19 lines, both you and Fassbender tell him that you
20 believe he was back there. Correct?
21 A Yes.
22 Q Okay. During the course of this investigation --
23 and you're the -- one of the two lead
24 investigators -- was the carpet from the back
25 bedroom ever removed?

1 A I know a portion of it was. I don't know if it all
2 was or not, but there was a portion of that carpet
3 removed, yes.

4 Q Well, you're the lead investigator. It seems to
5 me you would know what evidence has been
6 submitted to your lab for analysis, wouldn't you?

7 A I have a general knowledge of what went to the Crime
8 Lab, yes.

9 Q And what was the purpose of submitting that
10 carpet to the Crime Lab?

11 A Again, I don't know for sure if that carpet went to
12 the Crime Lab or just one of our techs looked at it.
13 I --

14 Q All right.

15 A -- I couldn't ans --

16 Q Let me ask you this: Given the questioning
17 regarding the location of items in that back
18 bedroom, would it have made any sense at all to
19 you, as an investigator, to have taken the carpet
20 to have it looked at to determine any sort of
21 wear patterns that might be evident?

22 A No, I don't think wear patterns would have told us
23 anything.

24 Q Pard me?

25 A No, I don't think wear patterns would have told us

1 anything.

2 Q Well, you've got carpet in your house, I guess,
3 somewhere, don't you?

4 A Yes, sir.

5 Q Okay. Carpet under a piece of furniture tends
6 not to get worn out, whereas, areas immediately
7 surrounding that type of furniture tends to show
8 some sign of wear, doesn't it?

9 A That would be true.

10 Q Okay. So wouldn't it have made sense in your
11 opinion as an investigator to pull that to
12 determine -- in order to try to verify some of
13 the things that Brendan said about the location
14 of the furniture? Wouldn't that have made sense
15 to you?

16 A No, that wouldn't have made sense. Mr. Avery only
17 was in that trailer for maybe a year. It wouldn't
18 have made a difference.

19 Q Okay. Well, again, as to the back bedroom, on
20 March 1 Brendan told you, did he not, that he cut
21 Teresa's throat?

22 A Yes.

23 Q All right. Yet there was absolutely no evidence
24 of blood spatter or blood pooling in the bedroom;
25 correct?

1 A You're talking about two different things. But there
2 was no blood spatter and we didn't find any pooling,
3 which I'm not surprised about at all.

4 Q Well, in the bedroom, was it a -- a mattress
5 only? Was there a box spring?

6 A I believe there was a mattress and box spring.

7 Q Okay. Did you personally examine the mattress?

8 A I did not. Our evidence techs do that work.

9 Q And you discovered from the evidence techs that
10 there was absolutely no evidence of blood on that
11 mattress; correct?

12 A Not surprisingly. He's correct.

13 Q Was there any luminol sprayed in the back
14 bedroom?

15 A Yes.

16 Q Nothing to indicate the presence of blood in the
17 back bedroom; true?

18 A Not true.

19 Q Was there any on the bed? The bedding?

20 A The bedding was burned. There would be no way to
21 tell.

22 Q Well, how do you know the bedding was burned?

23 A Brendan Dassey told us the bedding was burned in the
24 fire after they killed Teresa.

25 Q Okay. And Brendan Dassey also told you that he

1 cut Teresa's hair, didn't he?

2 A Yep.

3 Q But the truth of the matter is throughout the

4 course of this investigation you didn't find one

5 single hair fiber that could be identified to

6 Teresa Halbach; right?

7 A That's true.

8 Q All right. So he told you that, but you -- What?

9 You don't believe it or you do believe it?

10 A No, I believe he cut their -- her hair.

11 Q Okay. This was a carpet cleaner; right?

12 A That is true.

13 Q You guys seized the vacuum, didn't you?

14 A We did.

15 Q You had somebody go through that vacuum to

16 determine the presence of things like hair,

17 didn't you?

18 A Yes, we did.

19 Q And you found none; true?

20 A Not true. We found lot of hair.

21 Q Did you find any you could identify as Teresa's?

22 A Doesn't work that way.

23 Q Did you find any you could identify as Teresa's?

24 A No. But I'd like to explain if you'd like me to.

25 Q I'll give you a chance.

1 A Sure.

2 Q Did you have, during the course of your
3 opportunity to be involved in this case, the
4 opportunity to get from Teresa's residence any
5 hairbrushes?

6 A We did.

7 Q So you had samples of her hair; correct?

8 A Yes.

9 Q But none of what you found in the -- at the
10 trailer was able to be matched up to any that
11 came from any of her hairbrushes; right?

12 A Again, not true.

13 Q Well, is there -- did the lab provide you any
14 sort of report indicating there was a match
15 between the hair of what was found at the scene
16 and what you believed to be Teresa's hair?

17 A There was no hair attempted to match up. And there's
18 reasons for that.

19 Q Well, I'm sure the State will give you a chance
20 to explain that. But I find it somewhat curious
21 when you tell us that you believe some things but
22 you don't necessarily believe the others that he
23 told you?

24 ATTORNEY FALLON: Objection.
25 Argumentative.

1 THE COURT: Objection's sustained.

2 Q (By Attorney Edelstein) Detective, how many
3 times during the course of this three-hour
4 exchange did you or Fassbender tell Brendan, um,
5 in an effort to have him tell you things, it's
6 not your fault, Steve made you do it?

7 A Quite a few times as you guys saw yesterday.

8 Q Pard me?

9 A Quite a few times as the jury saw yesterday.

10 Q But you don't know how many?

11 A Didn't count them. No.

12 Q Okay. Directing your attention to page 580,
13 please?

14 A Sure.

15 Q Toward the bottom, there, Detective, third
16 entry -- ac -- actually fourth entry from the
17 bottom, you stated to him, you helped to tie her
18 up, though, didn't you, Brendan, because he
19 couldn't tie her up alone. There's no way. Did
20 you help him to tie her up? Right?

21 A That's what I said. Yep.

22 Q All right. Do you believe that that's a leading
23 and suggestive question to him?

24 A I believe that's something that makes sense.

25 Q Do you believe it to be a leading and suggestive

1 question?

2 A No.

3 Q Okay. Going over to the next page -- Well,
4 before we get there, during the course of this
5 interview, Brendan told you that, um, there was a
6 rope involved in the restraint; correct?

7 A That's true.

8 Q Okay. And you were present during the course of
9 all the prior testimony, and you heard, and I
10 can't recall his name real quickly, but the truth
11 of the matter is there was absolutely no rope
12 fibers that were recovered that would indi --
13 that would tend to verify what he told you about
14 the restraint?

15 A I believe that's correct. There were no fibers
16 found.

17 Q And there was no rope?

18 A There was a lot of rope found on that, uh -- in that
19 area.

20 Q In the bedroom?

21 A Um, there was a lot of rope throughout. I don't know
22 if there was any in the bedroom, specifically.
23 There's a lot in the garage.

24 Q There wasn't any in the -- You have no memory of
25 any being found in the --

1 A I don't recall if there was specifically any in the
2 bedroom or not.

3 Q Well, given what he told you about that, I
4 would -- would you expect that you would remember
5 that? That being a fairly significant, uh, piece
6 of physical evidence to corroborate something
7 he's told you?

8 A We took almost a thousand pieces of evidence. No. I
9 don't recall if there was or not.

10 Q He also told you that he helped in some fashion
11 removing, um, the metal restraints that he
12 claimed were used; right?

13 A That's correct.

14 Q Detective, we've got a number of metal handcuffs;
15 right?

16 A Yes, we do.

17 Q They all have different exhibit numbers?

18 A Yes, sir.

19 Q The pink ones didn't have -- they didn't come
20 from Steve Avery's place; right?

21 A No. They came from Brendan Dassey's house.

22 Q They came out of his mother's room?

23 A They came from where Brendan Dassey --

24 Q They --

25 A -- lives.

1 Q -- didn't come from -- Brendan lives with his
2 mother?
3 A That is correct.
4 Q Who else lives with his mother?
5 A Uh, he's got three other brothers.
6 Q Who?
7 A Bobby, Blaine and Bryan, is it, I believe, and Barb.
8 Q All right. So why didn't you just tell us that
9 they came from Bobby's house?
10 A They came from the Dassey residence.
11 Q All right. But they didn't come from Brendan's
12 room?
13 A In his room, specifically, no.
14 Q Okay. In any event, some other ones -- And I'm
15 not attempting to befuddle you or the record, but
16 I don't recall which exhibit number it was.
17 There were -- there was a pair of handcuffs and
18 these longer ones taken from the Avery place;
19 right?
20 A Yes.
21 Q Okay. Brendan claims to have un -- undone some
22 of these; right?
23 A That's true.
24 Q But you know from your involvement in this case
25 there's no fingerprints of his, no DNA of his on

1 there; right?

2 A Not surprisingly, no.

3 Q Not surprisingly?

4 A That's correct.

5 Q You can editorialize when they ask you. Just try

6 to answer mine for me, would you please?

7 A Sure. I'll do the best I can.

8 Q Isn't it fair to say that you and Fassbender

9 repeatedly, throughout the course of this in --

10 this interview, tried to get Brendan to say that

11 Teresa had socks on while she was restrained on

12 the bed?

13 A No, I don't think that's true. I don't recall that.

14 It might have been mentioned, but I don't think

15 repeatedly that I'm aware of.

16 Q On the 1st, if you know, how many times did

17 either you or Fassbender tell Brendan, all right,

18 Brendan, we're just going to start all over

19 again? And you, essentially, would have him

20 start from, what you believed to be the

21 beginning, about when he got home from school?

22 A I could estimate maybe three to four times, but,

23 again, I didn't count how many times I said certain

24 things.

25 Q So if it was more in the nature of six or seven,

1 you wouldn't debate that, necessarily?

2 A I wouldn't debate it with you unless I counted.

3 Q I believe you testified yesterday about some of
4 the questions that you may have used to test the
5 veracity or correctness of some of the things
6 Brendan said; right?

7 A Yes.

8 Q Okay. And you gave as an example of the
9 statement -- Directing your attention, Officer,
10 to page 662?

11 A Yes.

12 Q At the very bottom, that's the exchange that was
13 had between the investigators and Brendan about
14 the tattoo; right?

15 A That's correct.

16 Q And you used that as an example to the jury
17 yesterday that that served as verification to you
18 that he was being honest; right?

19 A That was one of the things that we use. It's one of
20 the false things that we know is false that we put to
21 him.

22 Q Okay. On 662, can you read the last entry?

23 A Okay. We know now that Teresa had a tattoo on her
24 stomach. Do you remember that?

25 Q And on 663, his response?

1 A He shakes his head, no. Ugh-ugh.

2 Q All right. So by that he's indicating that he

3 doesn't know whether Teresa had a tattoo on her

4 stomach; right?

5 A I guess that'd be up to interpretation. That's not

6 how I took it.

7 Q That's not how you took it?

8 A He -- Let me just re-read that real quick. Yeah, I

9 guess you'd be accurate that he doesn't remember

10 that. Um-hmm.

11 Q Well, and then Fassbender follows up on 663, do

12 you disagree with me when I say that? Right?

13 A Right.

14 Q Brendan's response is, no, but I don't know where

15 it -- where it was. Right?

16 A Exactly what he says.

17 Q Okay.

18 A Yes.

19 Q So when he's asked, do you disagree with me, he

20 says, no. Correct?

21 A Yes.

22 Q Which would suggest, certainly by his response,

23 that he's not taking issue with what claim is

24 being presented to him? I.e., Teresa had a

25 tattoo. Right?

1 A Are you asking for my interpretation of what he said?

2 Q Well, isn't that what it meant to you?

3 A It meant -- If you're asking what it meant to me,
4 I'll tell you that.

5 Q Well, let me ask you this: You asked these
6 questions to get answers for purposes of trying
7 to determine the truth and veracity of what he's
8 saying?

9 A That is true. Yes.

10 Q All right. When you asked these questions, you
11 have to sit there and decide what does his answer
12 mean in order to go onto the next question;
13 right?

14 A That is correct. Yes.

15 Q Am I correct in stating that he did not disagree
16 with the assertion that was being put forth to
17 him?

18 A He's saying he doesn't disagree but he doesn't see a
19 tattoo. That's exactly the correct --

20 Q That's right.

21 A -- thing. Yeah.

22 Q So he is agreeing with the assertion, is he not?

23 A He's saying he doesn't disagree, but he doesn't see a
24 tattoo is what he's saying.

25 Q Wouldn't that suggest to you that he is,

1 therefore, adopting and agreeing with the
2 assertion?

3 A No. If he was adopting it, he would have said, yeah,
4 I remember the tattoo.

5 Q He told you he had no idea where it was; correct?

6 A Correct.

7 Q Does that not suggest to you that he is adopting
8 it? That I believe there was one, I just don't
9 know where it was?

10 A No, he doesn't say that.

11 Q All right. But you have to interpret what he
12 says, as an investigator, do you not?

13 A I do exactly what you're doing, yes. We try to
14 interpret.

15 Q All right. And that's what any human does when
16 they speak with somebody? They have to interpret
17 and understand answers, don't they?

18 A Yes.

19 Q How many times did he change his answer after
20 either you or Fassbender expressed displeasure by
21 telling him things? For example, Brendan, come
22 on. Or, Brendan, you're lying. Or, Brendan, we
23 know that's not true. How many times did he
24 change during the course of that three-hour --

25 ATTORNEY FALLON: Objection.

1 Irrelevance as phrased.

2 THE COURT: Sustained.

3 Q (By Attorney Edelstein) Did he ever change his
4 answer to any question that you asked of him, or
5 Fassbender asked of him, when you exples --
6 expressed displeasure?

7 A Yes.

8 Q Happened how many -- Do -- do you know how many
9 times?

10 A No.

11 Q Would you disagree with me that if I suggested it
12 was more than 20?

13 A I can't agree or disagree unless I count.

14 Q During the course of that interview, Brendan told
15 you that Teresa had been stabbed inside the back
16 of the Rav 4; correct?

17 A Yeah, I believe that's correct. Yes.

18 Q Yet other than the evidence that's already been
19 testified to regarding, uh, blood smears along
20 the back or where the expert believed the hair
21 may have been, that you would concede that there
22 certainly wasn't any evidence of blood spatter;
23 correct?

24 A I wouldn't expect evidence of blood spatter.

25 Q Would you explec -- expect blood spatter with a

1 stab wound?

2 A No.

3 Q It would -- But you're not an expert on blood

4 spatter, are you?

5 A Not an expert, no.

6 Q Okay. During the course of that interview,

7 Brendan told you that Teresa was moved about

8 using what's been described as a creeper; true?

9 A True.

10 Q And you know that, as a result of that statement,

11 the creeper was forensically examined; true?

12 A That's true.

13 Q No blood?

14 A Not surprising, no.

15 Q No DNA?

16 A Again, no.

17 Q So do you believe him when he says that?

18 A Absolutely.

19 Q But you have no physical evidence to back it up;

20 correct?

21 A Not true.

22 Q Tell me what you have by way of the creeper?

23 A We have the creeper, which he said was in the garage.

24 Q How many times had that boy been in the garage

25 before March 31?

1 A You'd have to ask him that.

2 Q Did you ask him that?

3 A No.

4 Q Don't you think he was familiar with what was in
5 that garage?

6 A I don't know.

7 Q You didn't ask him, did you?

8 A No, I didn't.

9 Q Did it seem reasonable, given your experience as
10 a human being, an investigator, that this young
11 man may have been in that garage before March 1?

12 A He may have been. I don't know.

13 Q I'm going to hand you what's been marked as
14 Exhibit 129. That's the, uh, .22 taken from
15 Avery's bedroom; right?

16 A Yes, sir.

17 Q In connection with your occupation, I assume
18 you've had some firearms training?

19 A I've had some. Yes.

20 Q Do you hunt?

21 A No.

22 Q Okay. But you do know the difference between a
23 single shot rifle and an automatic or
24 semi-automatic; right?

25 A Certainly.

1 Q Okay. Do you know the difference between a
2 bolt-action rifle, and a single shot, or an
3 automatic?
4 A I do.
5 Q Do you know the difference between a lever-action
6 rifle, and a single shot, and a bolt-action, and
7 a semi-automatic?
8 A I do.
9 Q And what you're holding is what type?
10 A This would be -- I believe that they described it as
11 a semi-automatic.
12 Q Very good. Um, now -- And it's -- So it's not a
13 single shot; right?
14 A That's correct.
15 Q Okay. If you would -- I think it's on 650. On
16 the 1st, when you had this interview -- And it's
17 about three-quarters of the way down. Bren --
18 Brendan had previously been asked, um, what type
19 of gun it was; right? And he had -- he responded
20 that it was a single; correct?
21 A Yes.
22 Q Okay. And then immediately thereafter Fassbender
23 says, it was a single shot, not a semi-automatic?
24 Right?
25 A Correct.

1 Q Okay. Now, I realize that you didn't ask that
2 particular question -- And answer it if you can.
3 But do you know why semi-automatic was contained
4 in that question, when, in fact, that you knew it
5 was a semi-automatic that had been recovered, as
6 opposed to the question being presented to him
7 about a bolt- or a lever-action?

8 A I didn't ask the question.

9 Q So you don't know the answer?

10 A No.

11 Q You don't know why he said it that way?

12 A You'd have to ask him.

13 Q Okay. Is it fair to say that there really wasn't
14 any sort of follow-up to determine why he
15 believed it was a single shot as opposed to the
16 semi-automatic, which, in fact, we know was true?

17 A Why there was a difference in his answer was your
18 question?

19 Q My question is, can you explain to me why there
20 was no follow-up on that issue in order to try
21 to, in fact, get a correct answer because he was
22 obviously wrong?

23 A We don't try to get correct answers. We try to get
24 the truth.

25 Q Now, going into this interview, you were

1 well-aware of the forensic findings regarding the
2 skull pieces and the, uh, gunshot wound
3 entrances; correct?

4 A Um, I was aware of them. Yes.

5 Q All right. If you know, how many times was it
6 suggested or said to Brendan that he shot Teresa?

7 A Several times. And, again, it's one of those things
8 he resisted each time we asked him. He resisted.

9 Q All right. So on some occasions he said, no,
10 you're wrong, I didn't do that?

11 A That's correct.

12 Q Despite the fact that he -- yourself and
13 Fassbender repeatedly, uh, made statements
14 suggesting that you knew that he had shot her;
15 correct?

16 A Yep. That's correct.

17 Q But you didn't have anything at all to support
18 that sort of conclusion, did you?

19 A Conclusion being --

20 Q That Brendan had shot Teresa?

21 A No. We asked him the question.

22 Q Did you ask him the question or -- You -- You
23 agreed with me just a minute ago that statements
24 were made to him, which the statements, in and of
25 themselves, suggest that, yes, he actually shot

1 Teresa; right?

2 A Yes. We asked him several times.

3 Q Okay. Yet you had absolutely nothing to support
4 a belief that he had, in fact, done that?

5 A Yes, we asked him several times whether or not he
6 shot her. Again, he resisted each and every time.

7 Q You suggested to him that his DNA would be on the
8 gun; right?

9 A Yes, we did. In which he said there --

10 Q If you had nothing at all to support even a
11 conclusion or a guess, even a guess, that he may
12 have shot Teresa, why would you present him with
13 those type of questions?

14 A I didn't know whether or not he shot Teresa or not at
15 that time. He puts himself in the bedroom. He puts
16 himself in the garage where she was killed.

17 Q You expressed an opinion to him, certainly, that
18 he did, in fact, do it, did he -- did you not?

19 A I certainly did, yes.

20 Q All right. Isn't it true, Detective, that the
21 first person, during the course of this exchange
22 with Brendan on the 1st, who even mentioned her
23 being shot in the head, was you?

24 A That is true. Yes.

25 Q All right. And, initially, he said, yes, he

1 believed there were two shots in the head; right?

2 A Which fits with the evidence that we have. Two shots

3 in the head, that's correct.

4 Q All right. All right. So if that fits with the

5 evidence that you have, I guess you would believe

6 what he tells -- what he said was correct then;

7 right?

8 A I believe that there were two shots in the head, yes.

9 Q You don't --

10 A That we know of. I mean, we don't have the whole

11 skull, unfortunately. Could there have been more?

12 Certainly.

13 Q Sure. The fact of the matter is that after you

14 go back and forth with this, he changes it

15 several times, doesn't he, as far as the number?

16 A When we get to the torso and things, yes.

17 Q Okay. I think the number runs all the way up to

18 10 or 11?

19 A That is true.

20 Q Exhibit 128. It's a little box. It's got the --

21 the shells casings -- .22 shell casings, CCI

22 manufacturer, from the garage; right?

23 A That's true. Yes.

24 Q You're the lead investigator; right?

25 A Yes. One of the --

1 Q Okay. You never asked anybody at the lab to
2 examine these for DNA evidence; true or false?
3 A That's true. Lot of reasons for it.
4 Q You'll get your chance.
5 A I'm sure I will.
6 Q You never asked anybody at the lab to examine
7 them for fingerprint evidence?
8 A Pretty difficult to get fingerprint evidence off of
9 that.
10 Q You're not a fingerprint expert, are you?
11 A I didn't say I was. No.
12 Q These -- These are pretty smooth surfaces, aren't
13 they?
14 A Pretty small smooth surfaces.
15 Q In order to load this gun, somebody has to touch
16 those shells at some point, don't they?
17 A Probably not big enough to get a whole fingerprint
18 on.
19 Q You're not a fingerprint expert, are you?
20 A No.
21 Q You've seen -- you have been involved in cases,
22 have you not, where experts have testified and
23 you relied on evidence utilizing portions of
24 fingerprints; correct?
25 ATTORNEY FALLON: Your Honor, I'm going

1 object to the continued line of inquiry of the,
2 uh, investigator. Said he wasn't a fingerprint
3 analyst.

4 ATTORNEY EDELSTEIN: He's offering
5 opinions about --

6 THE COURT: I -- I'll overrule the
7 objection.

8 Q (By Attorney Edelstein) You know what a partial
9 print is, don't you?

10 A I do.

11 Q And do you know investigators oftentimes rely on
12 that; right?

13 A No, I don't know that.

14 Q Um, directing your attention to page 582, please?

15 A Sure.

16 Q I'm sorry, 587?

17 A Okay.

18 Q All right. That's -- Is -- is that fair to say
19 that that's about the time during the course of
20 this interview that the issue comes up as far as
21 Teresa's head? It hadn't really come up much
22 before that? Fair statement?

23 A It comes up here.

24 Q Okay. Um, and Fassbender states about halfway
25 down, it's extremely, extremely important you

1 tell us this for us to believe you. Do you see
2 that?

3 A True.

4 Q Okay. And immediately thereafter you say, come
5 on Brendan, what else? Right?

6 A Very true.

7 Q Okay. Um, flip over, if you would, to 589?

8 A Okay.

9 Q Six lines down, when he's asked how many times
10 Steve shot Teresa, what's his answer?

11 A He says, twice, but I don't know if he's referring to
12 the head or what, but he does say twice.

13 Q Well, you didn't ask him what was being referred
14 to, did you?

15 A Well, he's just talked about the head prior to that.
16 So you asked me before to interpret and that would be
17 my interpretation, but...

18 Q Well, Detective, I hate to quibble, but I don't
19 think it takes a lot of interpretation. Look at
20 the very first question on that page. You asked
21 him, where did you shoot her? Right?

22 A Where did you shoot her? Right.

23 Q Yes.

24 Answer: In the head.

25 A That's correct.

1 Q Who shot her? What did he say?
2 A He did.
3 Q Talking about Steve; right? Right?
4 A I would assume. Yes.
5 Q Well, who else were you looking at?
6 A He said, he did. Yes, I assume he's talking about
7 Steve.
8 Q Um, little further down is it indicated anywhere
9 else upon the person of Teresa where she may have
10 been shot?
11 A Yes. He's asked, do you shoot her elsewhere?
12 Q Now, when you use the term "you" there's no way
13 to know from this transcript or, quite frankly,
14 from the video, who you're talking about? Are
15 you talking about he and Steve collectively? Are
16 you talking about him individually? Would you
17 agree with me that there's no way to discern to
18 whom you reference that question?
19 A Fassbender asked, do you shoot her elsewhere? His
20 answer: In the stomach.
21 Q Fassbender then asks a little further down, how
22 many times do you shoot her when he handed you
23 the gun? Right?
24 A Yep.
25 Q You have nothing to support that suggestion, do

1 you?

2 A We certainly did. And the answer is zero. Which he

3 continues to resist that. You're correct.

4 Q Well, when you say "resist" are you saying that

5 he is lying?

6 A No, I didn't say that.

7 Q But do you agree that prior to that question

8 being asked, you hadn't absolutely nothing to

9 suggest that there was any truth to this

10 statement that, when he handed you the gun?

11 A Not sure I understand your question.

12 Q When you did the interview on the 1st --

13 A Yes.

14 Q -- you had nothing to support the statement

15 submitted to Brendan when he, making reference to

16 Steve, handed you the gun. Is that true or

17 false?

18 A That's true.

19 Q All right. But, nevertheless, that was presented

20 to him as if it were a fact; correct?

21 A Absolutely it was.

22 Q All right. If you would flip over to page 591?

23 A Okay.

24 Q The last entry on the page, Detective, would you

25 read that question?

1 A How many times did you shoot her? Tell me again how
2 many times did you shoot her?
3 Q And you asked that question; right?
4 A Yes.
5 Q And the answer?
6 A He says, three. Which is not surprising.
7 Q And your next question on 592?
8 A And where -- where did he shoot her?
9 Q Talking again about Steve; right?
10 A Yes.
11 Q Okay. His answer: In the head, stomach, and
12 heart.
13 A That's exactly what he said.
14 Q You then asked him, what side of the head;
15 correct?
16 A Yep.
17 Q And he told you he had no idea. What he said
18 was, no.
19 A That's correct.
20 Q Okay. How, if at all, do you account for --
21 Well, just let me put it this way: So when this
22 questioning continues about where the shots may
23 have occurred, it changes, does it not?
24 A It does.
25 Q And you knew that, from the forensics, there were

1 two pieces of skull, two holes; correct?

2 A True.

3 Q All right. And I have to find my right page

4 here. During the course of this exchange, you

5 had asked about some hooks or wires in the

6 garage; right?

7 A Yes.

8 Q Um, were those ever forensically examined?

9 A Um, they were looked at by our evidence techs.

10 Q And they found absolutely nothing of any

11 significance; correct?

12 A True.

13 Q If you know, how many times during the course of

14 the contact you had with Brendan on the 1st did

15 you personally ask him, or suggest to him, or

16 tell him that Steve made him do something?

17 A I can't -- Excuse me. I didn't go through and count

18 how many times I made any statement. I don't know.

19 Q Would you agree that it was multiple?

20 A I'll agree it was more than one time.

21 Q Would you agree it's more than ten?

22 A No, I wouldn't agree with that unless I counted it.

23 Q All right. If you would, go to page 571, please?

24 A Sure. Okay.

25 Q About in the middle of the page, little -- little

1 past that, and this is when you're talking about
2 whether or not Brendan engaged in any sort of
3 sexual activity with Teresa. Is that a fair
4 statement?

5 A Yeah, it looks like it. Yes.

6 Q All right. You make the statement to him, and
7 this is a little past halfway down, okay, what
8 happens next? Remember, we already know, but we
9 need to hear it from you. You see that?

10 A I do.

11 Q And that's what you told him; right?

12 A That's true.

13 Q And in literally the same breath you said, it's
14 not your fault. Right?

15 A You are right. Yes.

16 Q How many times did you tell him things like, it's
17 not your fault?

18 A Quite a few. I haven't counted them, but...

19 Q How about --

20 A Many.

21 Q -- page -- Go to page 574, please. Again, about
22 halfway down?

23 A Yes.

24 Q You said to him, it's not your fault. He makes
25 you do it. Right?

1 A Yes.

2 Q And I take it you don't believe, as a trained
3 investigator, dealing with Brendan Dassey, that
4 phrasing things to him that way, where you
5 suggest that if he did something, it's not his
6 fault, is going to cause him to say he did,
7 because you are telling him that it's okay and
8 it's not his fault?

9 A No. I don't believe that at all.

10 Q All right.

11 A Clearly you saw on the tape what he said.

12 Q Everybody saw what he says.

13 A That's correct.

14 Q But you would have to give me this, Detective,
15 that it's not just the sterile words that people
16 speak, but it's the meaning behind them; correct?

17 A Correct.

18 Q It's the intonation; correct?

19 A Correct.

20 Q It's the reaction between individuals; correct?

21 A Absolutely.

22 Q How many times during the course of this contact
23 did you praise him?

24 A Again, I haven't counted anything I've said in the
25 interview. I don't know how many times I said

1 anything in that interview.

2 Q Is it fair to say that it occurred on multiple

3 occasions? It occurred more than once?

4 A I'll agree with you.

5 Q But you don't know how many times?

6 A No, I don't.

7 Q Okay. Um, if you would, go to page 595?

8 A Five ninety-five?

9 Q Yes.

10 A Okay.

11 Q You see about three quarters of the way down?

12 The statement is made to him -- this is by

13 Fassbender -- I think you're doing a real good

14 job up to this point. Right?

15 A Yep.

16 Q Okay. And he goes on to say some other things;

17 correct?

18 A Yeah, it's a pretty lengthy paragraph.

19 Q Okay. A little further down, he -- when we're

20 talking about the garage, he claims to have

21 knowledge about some things happening in the

22 garage; right?

23 A Yes.

24 Q And he prefaces his request for Brendan to tell

25 the truth by the following words: You need to

1 tell us about this so we know you're telling the
2 truth. Right?

3 A Yes.

4 Q And in fairness, he said, I'm not going to tell
5 you what to say. You need to tell us. Right?

6 A You're correct.

7 Q And you knew that this was being recorded, didn't
8 you?

9 A Absolutely. So did he.

10 Q So if you wanted to get something on this video,
11 you knew all you had to do was say it; right?

12 A It's nothing to do with the video.

13 Q Did you -- you knew it's being recorded?

14 A So did Brendan.

15 Q Okay. I'll grant you that. Think you're a
16 little more sophisticated and intelligent than
17 Brendan?

18 A I would hope so.

19 Q Do you think so? Not what you hope.

20 A I think so. Yeah, I think so.

21 Q So is Fassbender; isn't he?

22 A I think so.

23 Q In fact, he's been at this lot long -- about
24 twice as long as you have, hasn't he?

25 A That's correct. Yes.

1 Q Just as the number of gunshots that you discussed
2 with Brendan changed throughout the course of
3 this contact, is it -- it is correct, is it not,
4 that the times changed when talking about events,
5 particularly when he gets home, when he goes over
6 by Steve; right?

7 A Yes. Not surprisingly, they do.

8 Q Isn't it true, Detective, during the course of
9 your contact on the 1st, that Brendan's told you
10 flat out he was guessing at some of the questions
11 that were asked of him?

12 A You'd have to be more specific. I don't know. I'm
13 sure he may have said that once or twice, but...

14 Q For example, the knife. If you to page 645?

15 A Sure. Okay.

16 Q You asked him, now, quarter of the way down, what
17 about the knife? Where is the knife? Be honest
18 with me. Where's the knife? Right?

19 A Yes.

20 Q Okay. His answer: Probably in the drawer.

21 A That's what he says.

22 Q Okay. And you asked, which drawer? Right?

23 A Right.

24 Q If you would, just kind of read yourself the rest
25 of that on that page.

1 ATTORNEY FALLON: I'm sorry, Counsel,
2 what page was that again?

3 ATTORNEY EDELSTEIN: Five -- I'm sorry.
4 Six forty-five.

5 ATTORNEY FALLON: Thank you.

6 THE WITNESS: Yeah. I'm ready.

7 Q (By Attorney Edelstein) Is it fair to say that
8 even you concluded that he has no idea what
9 happened to this knife?

10 A That -- That's true, because he says, I think it is.
11 Indicating he's really not sure where it went.

12 Q So the insertion of the simple word "think"
13 indicates to you that that, in and of itself, is
14 not a complete affirmation of what's being said?
15 Do I understand you correctly?

16 A I'm saying is that he says, I think -- that's where I
17 think it is. And I take that to mean he's not really
18 sure where it might be.

19 Q So when he told you, for example, that he thought
20 it was two shots, three shots, ten shots, are
21 you -- are you then adopting the same
22 interpretation that you're not even certain that
23 he has any certainty to that -- that answer?

24 A I'm thinking he knows she was shot, but he probably
25 doesn't recall the exact number of times. That's the

1 way I took it. Which is not surprising.

2 Q When Brendan said things that you did not believe
3 to be true, is it fair to say that you attempted
4 him to correct his response?

5 A Yes, and several times he would resist that.

6 Q Well, when you say "resist", you're certainly not
7 telling this jury that the mere fact that he did
8 not change an answer, that you have any
9 independent method to prove that his answer was
10 false?

11 A It shows that he's not very suggestible to answers.
12 That he answers what he knows. That's what it shows.

13 Q Now, you're not an ex -- an expert on
14 suggestibility by any means, are you?

15 A You are correct. I'm not.

16 Q All right. But you conceded earlier that he did
17 change his answers many times?

18 A Yes, he did.

19 Q But when you say he resists -- Let -- Let's go
20 back to the hair.

21 A Um-hmm.

22 Q I guess you would conclude that he, uh -- he --
23 he clearly told you that he cut the hair; right?

24 A True.

25 Q You asked him where the hair went?

1 A True.

2 Q Okay. Supposedly on what he described as the
3 counter. Later determined to be the nightstand
4 or something in Steve's room; right?

5 A No. I believe what he said is on the dresser.

6 Q He told you a counter. You asked him. Then he
7 clarified that it was the dresser; correct?

8 A I recall him saying dresser. If he said counter
9 first, I'll go along with that.

10 Q Whatever. We're talking about the back bedroom?

11 A That is correct.

12 Q He told you that; right?

13 A Yes.

14 Q You had nothing to sh -- You found no hairs of
15 Teresa in the trailer; true or false?

16 A We don't know. So I'd have to --

17 Q Well --

18 A -- say false.

19 Q -- what do you mean you don't know? You're the
20 lead investigator. My question is this simple,
21 did you find any hairs of Teresa Halbach in the
22 trailer of Steven Avery?

23 A We don't know.

24 Q You looked, didn't you?

25 A We recovered a lot of hair.

1 Q Well, did you not ask anybody to check it to see
2 whose it was?
3 A It's not that simple.
4 Q You're not an expert on hair comparison, are you?
5 A You're right, I'm not.
6 Q You had -- At any given time, what was the
7 maximum number of people out there on the Avery
8 property helping you with this case?
9 A Any given time it could range from 15 to over a
10 hundred.
11 Q And not only that, you have the resources of the
12 State Crime Lab; right?
13 A Yes, we did.
14 Q You had troopers out there helping you?
15 A Helping us search. That is correct.
16 Q You had volunteers?
17 A We had volunteer firefighters helping us go through
18 the salvage yard.
19 Q With all of these resources, there some reason
20 that you did not -- Let me make sure I'm clear.
21 Did you ever ask anybody involved in the forensic
22 world to compare hairs found at Steven Avery's
23 trailer with known samples from Teresa?
24 A There were general discussions revolving --
25 Q Did you or didn't you? That's a simple question.

1 Yes or no?

2 A There were --

3 Q I'm just asking you the same way you asked

4 Brendan many times. Yes or no?

5 A There were general discussions. Yes.

6 Q Did you ask -- So is the answer, yes? Did you

7 ask somebody to do a comparison?

8 A We had general discussions about hair. Specific --

9 Did I ask somebody, specifically, to do a comparison?

10 No.

11 Q And you agree that you could have done that,

12 couldn't you?

13 A No, I don't.

14 Q All right. You were lead investigator? Co-lead

15 investigator; right?

16 A Yes, sir.

17 Q What stopped you from asking either the Wisconsin

18 State Crime Lab or another lab from doing a hair

19 comparison?

20 A Well, if you'd like me, I'll explain the whole thing

21 about hair, if that's what you'd like.

22 Q I don't want to know your spin on the value of

23 doing the comparisons. I just want to know why

24 you didn't ask somebody to do it?

25 ATTORNEY FALLON: Well, then, he's --

1 then he's now entitled to answer that question.

2 THE COURT: I -- I think he is, Counsel. I
3 think -- I think -- You -- you may characterize it,
4 editorially, as a spin, but you've asked him, so go
5 ahead and answer it.

6 THE WITNESS: Thank you.

7 Q (By Attorney Edelstein) Why didn't you do it?

8 A Thank you. Hair evidence -- First of all, we took a
9 carpet cleaner, which you've all seen. There's a
10 vacuum cleaner that was taken as well. Okay? There
11 is probably thousands and thousands and thousands of
12 hairs both in there and in the vacuum cleaner.
13 Number one.

14 Number two, we had to prioritize things
15 on this case. It was a huge case. One of the
16 biggest submissions of evidence ever done to the
17 Wisconsin State Crime Lab.

18 Had we had somebody look through every
19 piece of hair that we found, they'd still be
20 doing it today, and probably still be doing it
21 two years from now. The Crime Lab is -- has only
22 so many people, which you all know, which you've
23 all seen.

24 We took the evidence that we thought
25 best would solve this crime and bring the

1 murderer of Teresa Halbach to justice, and that's
2 what we did.

3 Could we have spent two, three, four
4 years going through every hair? Absolutely. Is
5 it feasible? It's not feasible.

6 And if he's going to talk to me about
7 DNA, which he's probably going to, on hair,
8 almost impossible unless you have a root. He
9 never cut any of the -- He never pulled the hair
10 out. He said he cut it. Thus, there's no root
11 there.

12 So there's a lot of reasons we didn't do
13 hair analysis. Not to mention the Crime Lab does
14 very limited hair analysis anymore to begin with.

15 DNA? Absolutely, if you have the root.
16 Even if you have the root of that hair, and it
17 went through that cleaner, you have to have skin
18 follicles on that root. The odds of having skin
19 follicles on the root of that hair when it goes
20 through a cleaner like that are probably slim to
21 none. Could we have done it in the next couple
22 years? Certainly. That's the reason.

23 Q So as a matter of -- of prioritizing things?

24 A One of the reasons.

25 Q Could have been done. You just chose not to;

1 correct?

2 A I'll go with you. Sure.

3 Q All right. Okay. Detective, let me ask you

4 this, uh, going back to the interview again.

5 Initially, I believe, Brendan said that he saw

6 Teresa up on the porch talking with Steve; right?

7 A True.

8 Q Okay. And then at some point in time he was

9 confronted, um, and Fassbender -- and, I'm sorry,

10 I can't find a page -- but if you have an

11 independent memory -- Maybe do it this way. Um,

12 Fassbender told him that, quote, you couldn't

13 have seen Teresa on the porch. Right?

14 A Very true.

15 Q Okay. And then Brendan agreed with that, and

16 said, no, I didn't. Right?

17 A Correct, because Brendan didn't see her there.

18 Q And that's another example of times that he

19 changed based upon either a leading question or a

20 negative response from one of you guys; right?

21 A Because Brendan knew he was caught in a lie.

22 Exactly.

23 Q Well, you don't know what Brendan knew, did you?

24 You -- Come on.

25 A Brendan knew it wasn't true. She wasn't there on the

1 porch at that time. We know that.

2 Q You have the ability to sit here and purport to
3 tell this jury that you have the ability to know
4 what he knows?

5 A I know Teresa wasn't there on the porch at that time.
6 So he couldn't have seen her.

7 Q You're not a mind reader, are you?

8 A She wasn't on the porch.

9 Q Are you a mind reader? Do you have that ability?

10 A I'm not a mind reader.

11 ATTORNEY EDELSTEIN: That's all.

12 THE COURT: Redirect?

13 ATTORNEY FALLON: Yes. Thank you.

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY FALLON:

16 Q Let's start with, um, guns. Were any bolt-action
17 or lever-action .22 caliber weapons seized from
18 Steven Avery's trailer?

19 A No.

20 Q All right. During your questioning of the
21 defendant, did it appear to you that he had
22 sufficient -- Or no. Did it appear to you that
23 he really knew much about guns?

24 A No. Matter of fact, he had talked about being afraid
25 to shoot a cat, or watch somebody shoot a cat, for

1 fear he had hardly any knowledge of guns.

2 Q All right. Now, Counsel asked you -- I'm going
3 to switch, now, to the SUV and this blood spatter
4 question. You were asked a question on
5 cross-examination about wouldn't you expect blood
6 spatter in the SUV if a stabbing, for instance,
7 had occurred there, and you said you would not.
8 Tell us why?

9 A That's correct. When somebody's stabbed, there isn't
10 this great amount of blood that goes flying out of a
11 stab wound. Anybody that's in the medical field has
12 knowledge of that.

13 Um, when you talk about blood spatter,
14 it usually comes from something higher velocity.
15 Stabbing a knife into somebody isn't going to
16 cause all this blood to go anywhere. When you
17 stab somebody in the area, from my limited
18 medical knowledge -- Where is it he says he
19 stabbed her? It's in the cavity. Even, free
20 bleeding. It's going to bleed into that cavity.
21 It's pretty simple. There isn't going to be this
22 big blood spatter. It's not going to happen.

23 Q All right. So there's a difference between
24 spatter and pooling of blood, for instance?

25 A Yes, sir.

1 Q All right. And just so that we're clear, we
2 didn't see any pooling in the center of that
3 cargo area upon forensic examination?

4 A No, I wouldn't expect it to.

5 Q All right. Now, did you learn that there were
6 the pos -- that -- that it was at least two
7 gunshot wounds to the head at the same time? Did
8 you learn about both gunshot findings at the same
9 time?

10 A No. Actually, um, we had learned about the first
11 gunshot wound, I believe it was around November --
12 Correction. Let me -- Let me go back. I believe it
13 was around, um, February 27. We learned much later
14 than that, and I believe it was after this interview,
15 about the second gunshot wound that they found. So,
16 no, we did not know there were two suspected entrance
17 wounds.

18 Q At least two?

19 A Two that we know of. Again, we don't have all of the
20 skull.

21 Q Okay. Um, I just have a couple of final
22 questions. The defendant was at, um, the
23 Sheriff's Department for quite a while. But in
24 terms of the actual interview of the defendant,
25 how much interview time are we talking about

1 here?

2 A Two hours and I believe it's 53 minutes, outside of
3 breaks when we got him water, when we got him sodas,
4 when we got him a sandwich, when we offered him to go
5 to the bathroom. Outside of those breaks, there was
6 about two hours -- just under three hours.

7 Q Of questioning?

8 A Of questioning.

9 Q All right.

10 A Yes.

11 Q Now, um, yesterday, uh, when we ended, Counsel
12 asked you about the absence of DNA and
13 fingerprints that connect the defendant to the
14 crime. Do you recall that?

15 A I do.

16 Q All right. Now, although there is no DNA profile
17 of the defendant, or his fingerprints, is there
18 scientific evidence that connects him to this
19 crime in your opinion?

20 A Absolutely.

21 Q Let's take that in two parts. After receiving
22 the statement that we witnessed yesterday, what
23 did you do?

24 A After receiving the statement, which you guys all saw
25 yesterday, on March 1, we applied and obtained a

1 search warrant, which was signed by a judge. We
2 entered that garage, did a full search of that
3 garage.

4 As you already know, we found two bullet
5 fragments in that garage. Number one bullet
6 fragment that came -- that we found underneath
7 that air compressor, which you all saw, we
8 retrieved, we sent it to the lab, and we found
9 Teresa Halbach's DNA on that bullet that we
10 discovered after Mr. Dassey told us she was shot
11 in the garage.

12 That very bullet was analyzed by the
13 weapons specialist, which you heard talk here.
14 That bullet came from the .22 hanging in Steve
15 Avery's bedroom, which Brendan told us. Brendan
16 told us where we'd find that .22 and that's where
17 we found it. To the exclusion of all other guns,
18 that's where that bullet came from. That's
19 information that Mr. Dassey told us during this
20 interview that we did not know.

21 Q All right. And while you were interviewing him,
22 did you have a -- a fair command of the forensic
23 evidence that you knew and that existed prior to
24 this statement?

25 A Yes, sir.

1 Q All right. And in terms of the evidence that was
2 known to you at the time of the interview, what
3 scientific evidence did you -- do you believe
4 corroborates many of the details he provided?
5 Just to --

6 A There's a lot of it. I -- I'll -- I'll give you a
7 few examples. The bleach, for example, corroborates
8 what he says about cleaning up in the garage. We
9 find the bleach bottle where he says we'd find the
10 bleach bottle. The bleach bottle's empty.

11 The rake and the shovel, which he says
12 they took out of the garage to help tend the
13 fire. Where did we find the rake and shovel?
14 Out by the fire.

15 His pants. He's the one who tells us
16 that there's bleach stains on the pants from
17 cleaning up blood in the garage. He turns over
18 the pants. You saw for yourself what's on the
19 pants.

20 He indicated that there were re --
21 restraints used. He's the one who told us they
22 were handcuffs. We find handcuffs.

23 He tells us they put Teresa, after they
24 kill her, in the back of her own vehicle. We
25 find Teresa's DNA, blood, in the back of that

1 vehicle.

2 He tells us that Steve's got a cut on
3 his finger. We find Steve's blood in Teresa's
4 truck. Just a few examples.

5 Q Thank you.

6 ATTORNEY FALLON: No further questions.

7 THE COURT: Uh, any recross on these --

8 ATTORNEY EDELSTEIN: Yes.

9 THE COURT: -- points?

10 ATTORNEY EDELSTEIN: Please, Your Honor.
11 Briefly.

12 **RECROSS-EXAMINATION**

13 BY ATTORNEY EDELSTEIN:

14 Q So if Steven Avery had told Brendan Dassey, when
15 Brendan got over there, I shot Teresa in the
16 garage. You need to help me clean it up. That's
17 just -- that's -- that's certainly a possibility,
18 isn't it?

19 A Are you saying that's all he told him?

20 Q No. I'm just asking you. You -- you said that
21 in order to scientifically connect the defendant,
22 you pointed to the bullet fragment with Teresa's
23 DNA; right?

24 A That is correct. Yes.

25 Q I'm not going to argue with you. We know it has

1 her DNA --

2 A Yes.

3 Q -- right? And that came from the gun; right?

4 A Yes.

5 Q You don't know how many times he was in that

6 garage before he -- before the -- the, uh, 31st,

7 do you?

8 A How many times Brendan was in the garage?

9 Q Right.

10 A No, I don't.

11 Q You don't know how many times he sat around

12 watching Steve burn things in that pit, do you?

13 A No.

14 Q You don't know if he ever saw that rake and

15 shovel that's been paraded around up here before

16 the 31st, do you?

17 A No. He said he got them out of the garage.

18 Q So he could have had preexisting knowledge of the

19 rake and the shovel; right?

20 A Sure. He could have.

21 Q He could have had preexisting knowledge about

22 that gun hanging up there in that bedroom,

23 couldn't he?

24 A I'm assuming he could have.

25 Q All right. This all occurred Nov -- October 31;

1 right?

2 A Yes.

3 Q And he said that he told you that he helped Steve

4 clean up this mess; right? In the garage?

5 A He said he helped do a lot of things. One of the

6 things was help --

7 Q Listen --

8 A -- clean up the garage. Yes.

9 Q Okay. And he talked about using bleach; right?

10 A Yes.

11 Q So the fact that there's a bleach bottle that is

12 discovered some four months later in Steve's

13 trailer, you're telling this jury is scientific

14 evidence to corroborate what he said?

15 A I'm telling you to put it all together, along with

16 the gas cap --

17 Q Let them put it together.

18 A Absolutely.

19 Q Do you -- you just answer my question?

20 A Yes, I am.

21 Q That bleach bottle wasn't scientifically analyzed

22 to determine whether it had Brendan's DNA on it,

23 was it?

24 A No.

25 Q It wasn't scientifically analyzed to determine

1 whether it had his fingerprints on it, was it?

2 A Wouldn't expect it to.

3 Q You don't know how long that thing had been
4 sitting there, do you?

5 A I don't.

6 Q You told Mr. Fallon you had a pretty fair command
7 of the, uh, forensic evidence, uh, by the time
8 you conducted the interview; right?

9 A I knew the majority of it.

10 Q All right. Um, when, um, did you -- Well, let me
11 ask you this way. Did -- did I understand you to
12 say that it was February 27 was the first time
13 that you had any knowledge about a gunshot wound
14 being an issue in this case?

15 A I can tell you that there was a report written by
16 somebody at the Crime Lab on the 27th about a
17 suspected gunshot wound, and we received it on the
18 28th. Um, there may have been conversations with,
19 um, for example, Leslie Eisenberg, who you saw
20 testify about the skull pieces, earlier than that. I
21 didn't --

22 Q Excuse me. What -- what was that about earlier
23 than the 27th from Eisenberg?

24 A I said there may have been discussions that she may
25 have found one piece of skull earlier than that.

1 Q Let me ask you this.

2 A But I don't know.

3 Q Well, do you have a recollection of being told as

4 early as November 15 of '05 from your lead co-

5 investigator, Agent Fassbender, that he got

6 information from Eisenberg that there was clear

7 evidence of a gunshot wound?

8 A Do I have an independent recollection of that? No.

9 But I believe that would be true that --

10 Q All right.

11 A I don't know that she could say it was a clear wound

12 at that time. She had a sus -- suspect that there

13 was one at that time.

14 Q Yeah.

15 A That's probably true.

16 Q All right. So it certainly wasn't a revelation,

17 uh, from Brendan that there was an issue of a

18 gunshot wound; correct?

19 A One gunshot wound.

20 Q You already knew this going into this interview?

21 A One gunshot wound. Yes, I said that. Yes.

22 Q You also indicated in response to Counsel's

23 question about corroborating what he said to you

24 from a scientific standpoint that he told you

25 Steven had a cut finger and you found some blood;

1 right?

2 A True.

3 Q If he was over there tending the fire and he saw
4 Steve had a cut finger, does that surprise you?

5 A He even said Steve went in and got a bandaid to put
6 on it when he was --

7 Q So what? If he sees a cut finger and he says he
8 got a bandaid, how is that scientific?

9 A It's knowledge that he would have known and --

10 Q It's not --

11 A -- puts him -- again puts him there.

12 Q Okay. That's all.

13 THE COURT: All right. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Uh, any exhibits?

16 ATTORNEY EDELSTEIN: Your Honor, we
17 haven't moved that, uh, exhibit that the witness
18 has.

19 THE COURT: The transcript, 216, I think?

20 ATTORNEY EDELSTEIN: Right. Yes, 216.

21 THE COURT: All right.

22 ATTORNEY FALLON: No objection to that.

23 THE COURT: All right. That's received.

24 ATTORNEY FREMGEN: I think with the same
25 conditions we've talked about.

1 ATTORNEY EDELSTEIN: Right. For -- for
2 purposes of the record.

3 THE COURT: Right. Any further witness --
4 I'm sorry.

5 THE CLERK: Two-fifteen hasn't been
6 received yet.

7 THE COURT: And 215 is?

8 THE CLERK: Report and transcript of the
9 2/27 interview.

10 ATTORNEY EDELSTEIN: Same motion for the
11 same purpose.

12 ATTORNEY FALLON: Um, that one I may
13 want to think about. But let me just begin by
14 saying for the purposes of which it was
15 specifically identified and the specific
16 questions referenced, I have no objection. But
17 for any other purpose -- So, in other words, for
18 those limited purposes, I have no objection.

19 THE COURT: All right. It's received --

20 ATTORNEY EDELSTEIN: All right.

21 THE COURT: -- for those limited --

22 ATTORNEY EDELSTEIN: And I'm going to --

23 THE COURT: -- purposes.

24 ATTORNEY EDELSTEIN: Your Honor, just so
25 that we have cleanup, I think No. 214, which was

1 the --

2 THE COURT: Miranda rights form?

3 THE CLERK: That was received.

4 THE COURT: That was received.

5 ATTORNEY EDELSTEIN: Very good. Thank

6 you.

7 THE COURT: All right.

8 ATTORNEY FALLON: Um, Madam Clerk, are

9 there any other exhibits unaccounted for at this

10 time that we need to address?

11 THE CLERK: No.

12 THE COURT: Well, any further witnesses

13 from the State?

14 ATTORNEY FALLON: The State at this time

15 would offer to the Court no further witnesses.

16 We would rest our case and reserve our right to

17 rebut argue -- or, rather, evidence presented by

18 the defense.

19 THE COURT: All right. Is the defense

20 prepared to proceed?

21 ATTORNEY FREMGEN: Judge, we should,

22 uh -- We do have issues to deal with prior to

23 proceeding.

24 THE COURT: All right. We'll deal with

25 those issues. I'll excuse the jury.

1 ATTORNEY FALLON: Pretty close to the
2 morning breaktime anyways.

3 THE COURT: It is.

4 (Jury out at 9:58 a.m.)

5 THE COURT: All right. Be seated. You
6 have a motion, Mr. Fremgen?

7 ATTORNEY FREMGEN: Judge, yes. Before
8 we start our portion of the trial, we would
9 move -- and I believe it's Count 2, the, uh,
10 sexual assault offense -- we would move that the
11 Court consider at this time, uh, dismissal of
12 that count. The evidence thus far that's been
13 introduced this past week, in our opinion, does
14 not independently support the first degree sexual
15 assault charge as to any element of that offense
16 absent the confession of the defendant.

17 Now, it supports -- general rule is
18 that, uh, one may not be convicted solely upon
19 their uncorroborated confession. But I -- I can
20 cite cases, **Triplett v. State**, is the one that I
21 have, 65 Wis. 2d 371, I believe **Holt v. State** is
22 17 Wis. 2d 468, more of the, uh -- the primary
23 case in Wisconsin in regards to corroborated
24 confessions.

25 But in that regard, I believe it was in

1 **State v. Verhasselt**, 83 Wis. 2d 647, Wisconsin
2 Supreme Court case. Supreme Court stated that,
3 quote, as to the need for corroborating evidence,
4 all of the cri -- elements of the crime do not
5 have to be proved independently of an accused's
6 confession. Essentially, it's enough that,
7 quote, some corroboration, unquote, of that
8 confession be necessary in order to sustain a
9 conviction. That's the Supreme Court in
10 **Verhasselt**.

11 In this case, there are three crimes.
12 There are three distinct and separate offenses.
13 Each has distinct and separate elements of the
14 offenses. Now, certainly, we -- not taking issue
15 that there has been independent evidence that
16 supports at least an element of the other two
17 offenses, intentional -- first degree intentional
18 homicide and mutilation of a corpse.

19 In this case, there's been no
20 independent evidence to support the confession by
21 the defendant that first degree intentional -- or
22 excuse me -- first degree sexual assault
23 occurred. There's no independent evidence
24 outside the statement -- the videotaped statement
25 provided yesterday to the Court. No scientific

1 evidence that ties the defendant to any sexual
2 assault, no physical evidence that even suggests
3 that a sexual assault occurred.

4 Nothing connects this defendant with
5 Teresa Halbach in regards to any indication of a
6 sex crime. For example, no DNA of Teresa Halbach
7 on the leg irons or handcuffs. Items that might
8 be indicative of a sex crime.

9 No indication of bodily fluids
10 indicative of a sex crime such as semen. Nothing
11 on -- on any bedding, on any carpeting. No body
12 fluids at all suggestive of a sexual assault.

13 So we'd ask that the Court dismiss that
14 count in regards to the uncorroborated --
15 uncorroborated detail of any element of that
16 crime.

17 THE COURT: Response?

18 ATTORNEY KRATZ: Thank you, Judge. This
19 motion is brought, uh, not surprisingly, at the,
20 uh, conclusion of the State's case where the
21 standard the Court is to apply, uh, is whether a
22 view of the evidence in the light most favorable
23 to the State could sustain a conviction.

24 Mr., uh, Fremgen's argument, I believe,
25 is misplaced, uh, especially given the, uh,

1 postmortem, um, mutilation of the evidence and
2 the destruction, uh, of what we might expect to
3 find as, uh, other corroborative, uh, physical
4 evidence.

5 In this case, uh, the fact that the
6 body, uh, is, uh, totally consumed by fire, the
7 fact that the bedding and the clothes, which may
8 have at one point contained DNA, are, by the
9 defendant's own, uh, instrumentality, burned, uh,
10 do not, uh, aver to the, uh, benefit of the,
11 uh -- of the defendant, himself.

12 Uh, the term "corroboration", Your
13 Honor, uh, requires or suggests this Court, uh,
14 include and consider all of the evidence, uh,
15 that has been, uh, presented. There is certainly
16 corroboration as to, uh, restraints, as to, uh,
17 weaponry, and as to other, um, items that have
18 been seized when viewed in light, uh, most
19 favorable, uh, to the State, uh, would, in fact,
20 uh, be, uh, considered, or can be considered,
21 corroborative.

22 But the bottom line, and the underlying
23 principle, is, uh, when viewed in light most
24 favorable to the State, uh, whether or not the,
25 uh, jury could, in fact, convict, we certainly

1 have met that burden. We ask that the
2 defendant's, uh, motion be dismissed. Or, excuse
3 me, denied at this time.

4 THE COURT: Response?

5 ATTORNEY FREMGEN: Just one quick
6 response, Judge. The -- the case that I cited,
7 and I think it's cited numerous times and -- and
8 without -- well, somewhat ad nauseam in the case
9 law, says the elements of the crime, not any
10 element of any crime. I think if the Supreme
11 Court wanted to say any element of any crime
12 charged, they would have done that.

13 So in this case, there isn't any
14 evidence suggestive of any sexual assault. And
15 despite the fact that there might be evidence
16 that the State suggests had been destroyed, once
17 again, that comes from the confession of the
18 defendant. There's nothing to corroborate that
19 there was bedding in -- in -- in the fire, no
20 evidence has been suggested that they found
21 remnants of bedding in the fire.

22 So, once again, our -- I understand the
23 State's position, but the case law's pretty clear
24 there has to be something other than the
25 confession. Not just, well, it's not fair that

1 he can confess to something, destroy all of the
2 evidence, and then we can't go any further with
3 the case because we can't corroborate the
4 confession. That's the law.

5 THE COURT: I think -- and I don't have any
6 cases in front of me right now -- but most recently
7 there was a case called **State v. Bannister**. It's at
8 2006, uh, Wisconsin Appellate something or other,
9 uh, and that stated, once again, what I think,
10 essentially, both defense and prosecution agree,
11 that an uncorroborated confession cannot stand alone
12 to sustain a conviction.

13 What I believe the, uh -- the general
14 rule is, that there has to be some material fact
15 that corroborates, in one way or another, the
16 confession. Uh, the State, uh, is correct in
17 saying that at this stage in the proceeding there
18 need be shown here a prima facie case to, uh,
19 allow the Court to conclude, under the best of
20 all circumstances, at least at viewed -- as
21 viewed from the prosecution standpoint, that a
22 case has been entered that could convict a
23 defendant on a particular charge.

24 The -- In this particular instance,
25 the -- the -- the State finds some of the

1 implements described in the statement of this
2 defendant, and introduced, uh, uh, by way of the
3 videotape, uh, and the implements, themselves,
4 introduced here as pieces of evidence, to be
5 sufficient material corroborating evidence to --
6 to at least, uh, move this beyond this stage in
7 the proceedings, and I'll respectfully deny your
8 motion.

9 ATTORNEY KRATZ: When would you like us
10 back, Judge?

11 THE COURT: Uh, 10:25.

12 (Recess had at 10:07 a.m.)

13 (Reconvened at 10:27 a.m.)

14 THE COURT: Mr. Fremgen?

15 ATTORNEY FREMGEN: Thank you, Judge.
16 We'd call, first, Kris Schoenenberger-Gross.

17 THE CLERK: Please raise your right hand.

18 **KRIS SCHOENENBERGER-GROSS,**
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: Kris Schoenenberger-Gross,
24 S-c-h-o-e-n-e-n-b-e-r-g-e-r, hyphen, G-r-o-s-s.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY FREMGEN:

2 Q Um, Ms. Gross, if you could just pull the
3 microphone a little closer to you. Thank you.
4 Where do you work?

5 A Mishicot School District.

6 Q And how long have you been with the Mishicot
7 School District?

8 A This is my ninth year.

9 Q In what capacity do you work at the, uh, Mishicot
10 School District?

11 A I'm the school psychologist and the coordinator of
12 alternative services, which includes the special
13 education coordinator responsibilities.

14 Q In the capacity as the school counselor, are you
15 familiar with Brendan Dassey?

16 A Yes.

17 Q Now, how -- First of all, without going into
18 specifics, how do you know Brendan Dassey?

19 A I know him as a student at Mishicot High School and
20 as a student whom I evaluated.

21 Q Generally, in the -- the course of your
22 responsibilities with the Mishicot School
23 District, do you maintain or compile records
24 pertaining to each student?

25 A Yes.

1 Q And not -- not just students that maybe you're
2 involved with, all the students in the Mishicot
3 School District; correct?

4 A Correct.

5 Q And those are maintained at the School District,
6 itself?

7 A Yes.

8 Q And these type of records would include, for
9 instance, class schedules, grades, uh,
10 evaluations, IEPs?

11 A Correct.

12 Q Among other things possibly?

13 A Correct.

14 Q In your, um, capacity as the school counselor, do
15 you have access to these records?

16 A Yes.

17 Q And you have an opportunity at times to review
18 the records?

19 A Yes.

20 Q Now, in your capacity and in your position as
21 school counselor with the -- the Mishicot School
22 District, had you, in fact, had access to the
23 records of Brendan Dassey?

24 A Yes.

25 Q I'm going to show you what's been marked as an

1 exhibit. Does it indicate that that's been
2 marked as an Exhibit 217?

3 A Yes.

4 Q And can you tell us what that is?

5 A Um, this is a compilation of Brendan's records.

6 Q And you brought that to court today; correct?

7 A Correct.

8 Q So do you believe that that's a, uh, true and
9 accurate copy of the records from the Mishicot
10 School District that you've had access to?

11 A Yes.

12 Q I'm going to show you what's been marked as
13 Exhibit 218. I'll leave this here in case you
14 need to --

15 A Okay.

16 Q -- refer to it. It is -- Again, this -- this is
17 marked as Exhibit 218; correct?

18 A Correct.

19 Q Now, did this appear to be a record, for
20 instance, that we've been talking about? Records
21 kept in the normal course of the School District
22 activities?

23 A Yes.

24 Q And, specifically, this is a record of Brendan
25 Dassey; correct?

1 A Correct.

2 Q Can you tell us what -- what this is?

3 A This is a copy of, um, Brendan's most recent IEP,
4 Individualized Education Program, which contains, um,
5 the goals that he was working on, services that were
6 provided through his special education programming.

7 Q I want to ask you, if you could, if you could
8 refer to page -- I believe it's listed as --
9 either it's 1.11 or I-11? And do you -- do you
10 see that?

11 A Um-hmm.

12 Q You have to --

13 A Yes.

14 Q -- answer yes.

15 A Yes.

16 Q And this is part of that first, um, IEP; correct?

17 A Correct.

18 Q And -- and I shouldn't say, first. It's actually
19 dated September 29, 2005; correct?

20 A Correct.

21 Q Could you refer to the last paragraph on that
22 page? Do you see where it starts, present level
23 of education performance? And there seems to be
24 an un-highlighted or bold section and a bold
25 section; correct?

1 A Correct.

2 Q Now, the other -- the section that's not bold, is
3 that just the standard form, itself?

4 A Correct.

5 Q And then the bold section is added to it by an
6 evaluator or someone else from the school;
7 correct?

8 A Correct.

9 Q And if you could just look down to where it
10 starts, speech -- uh, speech, slash, language?
11 You see where that is?

12 A Yes.

13 Q Could you read from that?

14 A He exhibits difficulty responding clearly and
15 concisely to others. Paragraph comprehension,
16 defining vocabulary, and understanding
17 age-appropriate vocabulary terms remains challenging.

18 Brendan will occasionally ask questions
19 when he is unsure. However, eye contact and
20 participation during discussions with adults and
21 peers is limited. Brendan's memory,
22 specifically, is affecting all areas of language.

23 Q And -- and, actually, just to be clear, the word
24 "discussion" is actually misspelled; correct?

25 A Correct.

1 Q Okay. And, again, that's just simply a summary
2 of present level of educational performance? Or
3 part of the summary?

4 A Correct.

5 Q Okay. I'm now going to show you what's been
6 marked as Exhibit 219. And, again, can you -- do
7 you recognize that document?

8 A Yes.

9 Q A -- again, is that something that's from the
10 full record before you in Exhibit 217?

11 A Yes, it is.

12 Q That's just one item taken from that larger group
13 of documents; correct?

14 A Correct.

15 Q Again, kept at the School District?

16 A Correct.

17 Q And can you tell us what this -- this, uh,
18 Exhibit 219 is?

19 A This is, um, the evaluation summary pages from the
20 re -- or -- re-evaluation which was conducted in
21 September of 2005.

22 Q So this is one report used to generate the
23 progress report that we've just discussed? The
24 IEP?

25 A Correct.

1 Q And ask you to refer to -- I believe it's
2 under -- it's on the first page, par -- page 1.5?
3 Do you see that?

4 A Yes.

5 Q Okay. And under -- There's some handwritten
6 notes under the section -- looks like the -- a
7 form section. It says, to guide this analysis?
8 You see that?

9 A Yes.

10 Q Okay. Can you read the handwriting? I know --
11 I -- I don't --

12 A Yes.

13 Q -- know if you -- Okay. Can -- can you, uh, read
14 what that states?

15 A Brendan continues to demonstrate delays in his basic
16 reading, reading comprehension, and language skills,
17 both receptively and expressively. Brendan needs
18 specialized instruction which the regular education
19 environment alone does not provide.

20 He needs special education services and
21 supports to help him be successful in school and
22 to help meet his needs.

23 Q Thank you. Can -- and if I ask you to refer,
24 then, to page -- again I don't know if it's 1.3
25 or I.3 -- of that same exhibit, Exhibit 219? Do

1 you see that?

2 A Yes.

3 Q And under, E -- Again, this is part of that same

4 evaluation report; is that correct?

5 A Correct.

6 Q And, again, there's some handwriting on this form

7 as well?

8 A Correct.

9 Q And under, E, where it indicates, observations by

10 teachers or related service providers?

11 A Um-hmm. Yes.

12 Q Could you read the handwritten comments?

13 A Uses minimal eye contact, gestures, and a variation

14 of pitch in conversations in therapy and in the

15 classroom. Willingly participates in speech and

16 language therapy sessions.

17 Q I'm now going to show you what's been previously

18 marked as Exhibit 220, and do you recognize this

19 document?

20 A Yes.

21 Q Again, is this from that larger compilation of

22 school records?

23 A Yes.

24 Q And what is this, uh, specific document?

25 A This is an evaluation report that was completed by

1 the speech and language pathologist.

2 Q So this is specifically in regards to speech and
3 language; correct?

4 A Correct.

5 Q If I can ask you to refer to page three of that
6 document? And before I do so, I'm sorry, if I
7 can have you go back to the first page, it's not
8 actually dated with a specific date, is it?

9 A No. There are two dates.

10 Q Two dates. So the evaluation went from
11 September 22 and 27th of '05?

12 A Correct.

13 Q And, again, back to page three, under paragraph
14 six, discussion and summary, there appears to
15 be -- well, appears to be the summary of the
16 evaluation; correct?

17 A Correct.

18 Q Could you read that, please?

19 A Overall, Brendan demonstrates significantly delayed
20 receptive and expressive language skills, memory,
21 short-term memory, immediate memory, and working
22 memory, vocabulary, sentence comprehension,
23 pragmatics, and areas of abstract language. For
24 example, idioms.

25 Brendan's language standard scores range

1 from 58 to 83 with an overall language score of
2 66. Brendan's strengths are in his willingness
3 to participate in speech therapy, knowledge of
4 familiar sequences and his articulation skills.
5 This information will be shared with the IEP
6 team.

7 Q And, again, these are all records that are
8 normally kept in the -- at the School District?

9 A Correct.

10 Q And you have access to?

11 A Yes.

12 Q And have reviewed as well at times?

13 A Yes.

14 Q I'm now going to show you Exhibit 221, and though
15 the questioning may sound repetitive, again, this
16 is -- also appears to be a separate document from
17 that compilation you -- exhibit before you?

18 A Correct.

19 Q Can you, uh, indicate what that -- what that
20 document is?

21 A This is the IEP document dated October 12, 2004.

22 Q Similar to the one that you described in Exhibit
23 218 from September 29, 2005?

24 A Similar to. It does not include evaluation --

25 Q Okay.

1 A -- results.

2 Q And, again, if I could ask you to refer to
3 whether it's page I-11 or 1.11?

4 ATTORNEY KRATZ: Judge, if -- if -- if I
5 may interpose an objection, we've heard about
6 Brendan's, um, educational programming, um, close
7 to this event. That is, in the fall of 2005. I
8 don't know how going back several years is at all
9 relevant to any, uh, material fact that this jury
10 has to decide. That is, uh, how Brendan may have
11 done in school in ninth grade, or eighth grade,
12 or fourth grade, uh, I don't think really has any
13 relevance to this case.

14 THE COURT: I think this is from October 1
15 of 2004?

16 ATTORNEY KRATZ: Yes.

17 THE COURT: So that would be, uh, a year
18 prior; correct?

19 ATTORNEY KRATZ: It looks like they're
20 going backwards.

21 THE COURT: Well, I -- I'm -- I'm cognizant
22 of moving backwards here. Are -- are we going
23 back -- are you proposing to go back further than
24 this?

25 ATTORNEY FREMGEN: I have two more.

1 I -- I guess, given the historical background --
2 Uh, and if State wants to agree that the
3 information will be similar to what the
4 information is from Exhibit 218, 219 and 220, I
5 have no problem, uh, ending at this point.

6 THE COURT: Any response?

7 ATTORNEY KRATZ: I want to know how it
8 is --

9 THE COURT: Well --

10 ATTORNEY KRATZ: -- relevant to or
11 material issue of this case, Judge.

12 THE COURT: Well, I think -- I think it --
13 it certainly has some relevance. I'll -- I'll
14 overrule your objection. I'll permit the testimony
15 with respect to -- to 2004. Beyond that, I think we
16 do, uh -- I -- I think we're simply going to be
17 replicating what has already been testified to. So,
18 with that said, you may go ahead.

19 ATTORNEY FREMGEN: Okay.

20 Q (By Attorney Fremgen) An -- and, again, I'm
21 referring to you on page I.11 or 1.11?

22 A Yes.

23 Q Uh, there is, um, a handwritten note on the form
24 as well?

25 A Correct.

1 Q Okay. Bear with me. I just lost my place. The
2 last sentence of that, uh, handwritten paragraph,
3 starting with, Brendan will occasionally, can you
4 read from there?

5 A Brendan will occasionally ask questions when he is
6 unsure. However, eye contact and participation
7 during discussions with adults and peers is limited.

8 Q So, again, pretty similar to the previous -- or
9 the September, '05, IEP?

10 A Correct.

11 Q I just have one more exhibit.
12 (Exhibit No. 224 marked for identification.)

13 Q I'm going to show you what's been marked as
14 Exhibit 2 --

15 ATTORNEY KRATZ: Just a minute. Could
16 you --

17 Q (By Attorney Fremgen) -- what's been marked as
18 Exhibit 224. And, again, would that al -- also
19 appear to be one of the pages or documents that
20 is kept in that compilation exhibit before you?

21 A Correct.

22 Q And this is from September 16, '05?

23 A Correct.

24 Q These are -- What -- what, specifically, is this
25 document?

1 A This is a document that one of Brendan's regular
2 education teachers completed, um, to provide
3 observations about how he performs in the classroom,
4 how he processes information based on that person's
5 observations.

6 Q Can you turn to the second page of that document?
7 And if you could read from that highlighted
8 section?

9 A Brendan is expressionless, no facial expression,
10 seemingly blank stare, possibly indicating
11 daydreaming.

12 Q Thank you.

13 ATTORNEY FREMGEN: Thank you, Judge. I
14 have no other questions.

15 THE COURT: Cross?

16 **CROSS-EXAMINATION**

17 BY ATTORNEY KRATZ:

18 Q Uh, Ms. Schoenenberger-Gross, uh, as a school
19 psych -- Oh, I'm sorry. As a school
20 psychologist, um, are you educated to the point
21 where you have a Ph.D?

22 A No.

23 ATTORNEY FREMGEN: Judge, can we
24 approach?

25 THE COURT: Sure.

1 ATTORNEY FREMGEN: Before I --

2 (Discussion off the record.)

3 Q (By Attorney Kratz) I think we left off with
4 your educational background. Could you just tell
5 us what that is, please?

6 A I have a Master's of Science in education in the area
7 of school psychology.

8 Q All right. And, usually, when we hear the term
9 "psychologist", um, aren't we normally hearing
10 from people with, um, a more advanced degree? A
11 Doctorate? A Ph.D? Or something like that?

12 A Correct.

13 Q How is it, then, that you have obtained the title
14 psychologist?

15 A Well, school psychologists, specifically, um, which,
16 um, I'm able to obtain with a Master's Degree, but my
17 position and training is in evaluating students, um,
18 interpreting evaluation results, conducting
19 observations, interviews, um, you know, through the
20 special education progress programs and trying to
21 help determine appropriate programming for students.

22 Q And it's within that academic arena that you're
23 able not only to review just records, uh, but
24 you're able to form some opinions? And, in fact,
25 you've been asked to do this in the past in this

1 very case, haven't you?

2 A Correct.

3 Q Mr. Fremgen provided you a very large binder of

4 materials, Exhibit 217. Uh, those are the school

5 records. Have you had the opportunity in, uh, a

6 rather detailed way to review Brendan's prior

7 school records?

8 A Yes, I have.

9 Q And not only have you reviewed those records, but

10 you have, yourself, that is, as the school

11 psychologist, uh, performed some testing,

12 performed some examinations, and certainly

13 interviewed Brendan in the past; isn't that

14 right?

15 A Correct.

16 Q When determining the appropriate programming for

17 any student, especially students who are at least

18 under the, uh, broad umbrella of special

19 education, uh, it falls upon you to do that

20 testing; is that right?

21 A Correct.

22 Q Let's talk about Brendan's educational program.

23 First of all, it's true, is it not, that Brendan

24 was in regular classes at Mishicot?

25 A Yes.

1 Q So he wasn't the kind of student that, uh, you
2 would consider to be, uh, cognitively disabled?
3 You know what I mean by that term, don't you?
4 A Yes.
5 Q Was he the kind of student that your, um, school
6 district considered cognitively disabled?
7 A No.
8 Q And although getting some special classes in
9 speech or language, Brendan pretty much, um, was
10 a normal kid? That is, uh, went through normal
11 classes in Mishicot; is that right?
12 A Yes.
13 Q During your examinations of Brendan, do you
14 recall providing Brendan with, uh, various tests
15 that are tests that you could, uh, assess
16 Brendan's general IQ level?
17 A Yes.
18 Q And within his IQ tests, and understanding IQ's
19 kind of a broad, uh, range, but there are also
20 abilities that psychologists and, in fact, you
21 have, to assess, um, where Brendan may have some
22 strengths and where he may have some weaknesses,
23 at least cognitively or, uh, his ability to
24 understand, or to think, or to achieve; isn't
25 that true?

1 A Yes.

2 Q Are you familiar with the Woodcock-Johnson test?

3 A Yes.

4 Q Could you just briefly tell the jury what that

5 is, please?

6 A Um, Woodcock-Johnson, Third Edition, has tests of

7 cognitive abilities and achievements. Um, the

8 cognitive test looks at, um, measure of intelligence,

9 looking at his overall intellectual ability.

10 Q All right. And some of those areas that you look

11 at, uh, some of those sub-areas that we talked

12 about, included, uh, his, um, verbal abilities;

13 isn't that right?

14 A Yes.

15 Q And his ability to think? That is, what's

16 called, uh, the thinking scores, or the thinking

17 range; isn't that true?

18 A Yes.

19 Q Now, are there, um, norms? In other words, are

20 there numbers or averages that, uh, when a test

21 like that is scored, they're put into?

22 A Yes.

23 Q Now, the Woodcock-Johnson, uh, test, uh, could

24 you tell us what the average score is? Or if

25 there's a range of being average?

1 A The average range would be approximately 90 to 109.

2 Q All right. Now, one of the things you tested

3 Brendan for was something called the thinking?

4 That is, the ability to problem-solve or to

5 process information; isn't that true?

6 A Yes.

7 Q And are you familiar, Ms., uh,

8 Schoenenberger-Gross, with what Brendan's scores

9 were on his thinking ability? That is, his

10 ability to process information or to

11 problem-solve?

12 A Yes.

13 Q What is that score?

14 A A 93.

15 Q Ninety-three?

16 A Ninety-three.

17 Q That place, uh, Brendan in the average range of,

18 uh, his thinking ability?

19 A Yes.

20 Q Other things that you test for in, um, students,

21 not just Brendan, but in other students, are

22 their ability to achieve academically? That is,

23 how well they're able to, or at least predictive,

24 that is, how -- how you can predict they're going

25 to do, with, I guess, what we used to call book

1 learning; isn't that right?

2 A Yes.

3 Q And, again, those tests that are performed, um,

4 are broken down into various -- especially with

5 academic scores -- various disciplines? Academic

6 disciplines like reading, or math, or reasoning,

7 or things like that; isn't that true?

8 A Um-hmm. Yes..

9 Q And did you perform those tests and are you aware

10 of the results of those tests for Brendan?

11 A Uh, I did not personally perform an academic

12 achievement test on Brendan, but there was one

13 conducted in 2002, and I am aware of those results.

14 Q All right. Now, as you mentioned before, Brendan

15 has some, um, deficits, or at least he needed

16 some extra tutoring or help, uh, in the area of

17 speech or, uh, language, or even in reading;

18 isn't that true?

19 A Yes.

20 Q Uh, are you aware of the results for Brendan,

21 let's say, in the area of math? His math skills

22 and achievement levels?

23 A Yes.

24 Q Can you tell us what that number was, please?

25 A In 2002, he scored within the average range. I would

1 need to refer to the report to give the exact number.

2 Q Are you able to find that quickly?

3 A I -- I certainly can.

4 Q Why don't you look at Exhibit 217 and find that

5 for us, please. His math score was what?

6 A Uh, math reasoning was a 102. Math calculation

7 skills, 100.

8 Q Okay. And is that scored on the same, um, basic

9 score? That is, anywhere between 90 and 110 is

10 considered average?

11 A Correct.

12 Q Now, what's the difference between math and math

13 reasoning?

14 A Um, math calculation would be where he's required to,

15 um, do some possibly adding, subtracting,

16 multiplying, dividing. Just solving the basic

17 problems that are in the book. Reasoning, he needs

18 to apply the skills he has, which may include some

19 story problems that he would need to figure out how

20 to set up and solve.

21 Q And it's within that test, that is, when provided

22 with a story problem, or when given a set of

23 facts that he has to apply, uh, Brendan actually

24 achieved, if we're going to be technical about

25 it, over and above average? A 102; isn't that

1 true?

2 A Average. A 102 would be solid average range.

3 Q All right.

4 A Um-hmm.

5 Q So these results, that is, that is either 93 in

6 processing or problem-solving, or the 102, or the

7 100 results, supported your conclusion that

8 Brendan does not have any cognitive disabilities;

9 isn't that true?

10 A Correct.

11 Q As a school psychologist, are you also called

12 upon on occasion to assess and to make

13 recommendations about some behavioral problems?

14 A Yes.

15 Q Now, behavioral programming, at least within a

16 school district, and Mishicot's no different than

17 other school districts, can include some

18 specialized classes? In fact, can include

19 segregation of students from what's called the

20 general population; isn't that true?

21 A Correct.

22 Q Now, was Brendan a behavioral problem at

23 Mishicot?

24 A No.

25 Q Did Brendan exhibit any difficulties with, um,

1 acting out at school or, uh, in a, uh -- or
2 demonstrating an inability to follow direction?
3 A No. And "direction" meaning regarding behavior,
4 specifically.
5 Q I'm talking about behavior --
6 A Yes.
7 Q -- at this point. If Brendan would have been
8 unable, for whatever reason, an inability to, um,
9 conform or, uh, would -- would exhibit a -- a --
10 a propensity to act out in school, uh, would it
11 be likely that he would have been removed from
12 general classes?
13 A Over time, we would try intervention first, but --
14 but if that is not working, then we would look at
15 other programming options.
16 Q In fact, those programming options are called ED
17 or, uh, possibly, uh, emotionally disturbed
18 classes for -- for children; is that correct?
19 A Correct.
20 Q That wasn't Brendan?
21 A No.
22 Q When you go through all these, um, what are
23 called IEP, the Individual Education Programs,
24 and for Brendan it was for speech and -- and
25 language, uh, was Brendan's mother involved in

1 those programming meetings?

2 A Yes.

3 Q And to your knowledge, and in, uh, reflection of

4 the Exhibit, uh, 217, did Brendan's mother ever

5 express any particular concerns, uh, that, uh --

6 that she had with Brendan? Let's talk

7 behaviorally first, okay?

8 A Behaviorally? Can I refer to if she -- if it was

9 documented?

10 Q Yeah, why don't you do that?

11 A Okay. Did you say -- 217 in the binder. Okay. Are

12 you referring to the last IEP meeting, can I ask?

13 Or --

14 Q And that's the most relevant. In the fall of --

15 A Okay.

16 Q -- uh, 2005. Are there any behavioral notes

17 that --

18 A Okay.

19 Q -- are included?

20 A Um, in the IEP, it was indicated that she would like

21 him to continue to main an -- an assignment notebook.

22 Q Okay. So other than mom would like him to keep

23 a -- an assignment notebook, there were no other

24 problems that were noted at home? Behaviorally.

25 A Behaviorally? No. Not that I recall.

1 Q Okay. Let's talk about memory just a -- a -- a
2 little bit, because I know that, you know, one of
3 the notes that Mr. Fremgen had you read, it talks
4 a little bit about memory; isn't that -- isn't
5 that right?

6 A Correct.

7 Q Are you familiar with different kinds of memory?

8 A Yes.

9 Q Are you familiar that there is a difference
10 between something that is called, uh, event
11 memory, that is, when somebody actually goes
12 through an event and they remember it when
13 they've lived through something, that they
14 remember that differently than, say, when a
15 teacher reads them a story, or when they learn
16 something in class? You know there's a
17 difference in those two kinds of memory?

18 A Yes.

19 Q Now, from an academic standpoint, the memory that
20 you're most concerned about, and the memory that
21 Mr. Fremgen had you read about, uh, is that
22 second kind. That is, the memory that, uh, has
23 to do with learning or what he can remember from
24 a classroom setting; isn't that true?

25 A Correct.

1 Q You didn't test for -- and I assume you don't
2 have an opinion -- as to Brendan's ability to
3 recall or remember things that he's actually
4 lived through? That's true; isn't it?

5 A True.

6 Q Do you still have Exhibit 224 with you?

7 A Yes.

8 Q Mr. Fremgen asked you to read something. I think
9 it was on the second page. He highlighted
10 something for you to read. Do you see that?

11 A Yes.

12 Q I'm going to ask you to read the line just before
13 what Mr. Fremgen asked you to read. Could you do
14 that for me, please?

15 A He will respond when called on by teacher if he knows
16 the answer. If not, he shrugs his shoulders.

17 Q So from an educational classroom standpoint, when
18 Brendan, um, was called on in class and he didn't
19 know the answer, that note reflects he just
20 shrugged his shoulders; isn't that right?

21 A Correct.

22 Q Nothing in that note that's says when Brendan
23 didn't know an answer, he just made something up?
24 He just made up some false statement? Note
25 doesn't say that, does it?

1 A It does not.

2 Q The final area of questions that I have for you,
3 Ms. Schoenenberger-Gross, comes in the area of
4 suggestibility. Are there some students within
5 the Mishicot School District that you identify,
6 and, in fact, your staff, uh, expresses concerns
7 about, being overly suggestible?

8 A We -- we wouldn't probably use the term "suggestible"
9 but we would, perhaps, use the term, "easily
10 influenced". Um, and, yes, there are.

11 Q All right. And if there's a student in Mishicot,
12 uh -- in the Mishicot School District that you've
13 observed as being easily influenced, or easily
14 led, uh, is that something that would be
15 addressed either through programming or
16 discussions with teachers or discussion with
17 parents?

18 A Yes.

19 Q And that's happened before at Mishicot, hasn't
20 it?

21 A Yes.

22 Q Now, last question I have for you is, did the
23 Mishicot School District ever, ever identify that
24 Brendan Dassey was easily influenced, or easily
25 led, or suggestible, such that you addressed with

1 either a teacher or a parent that particular
2 observation?

3 A There's nothing in the records to indicate that that
4 was an area of concern.

5 Q That's fine. Thank you for coming.

6 ATTORNEY KRATZ: That's all I have,
7 Judge.

8 THE COURT: Redirect?

9 ATTORNEY FREMGEN: Yes, please.

10 **REDIRECT EXAMINATION**

11 BY ATTORNEY FREMGEN:

12 Q I'm going to show you what's been marked as, uh,
13 Exhibit 223. Do you recognize that document?

14 A Yes.

15 Q During some of the questions by Mr. Kratz, you
16 were referring to test results. Um, I believe
17 one, specifically, was the Woodcock-Johnson?

18 A Yes.

19 Q And --

20 THE COURT: Excuse me. Could you have her
21 identify the document?

22 ATTORNEY FREMGEN: I'm sorry.

23 Q (By Attorney Fremgen) What is -- What is that
24 document?

25 A This is a copy of my report from the testing that I

1 did in October of -- of 2002.

2 Q And is -- is this where you were testifying to as
3 far as, um, some of the numbers in regards to the
4 Woodcock -- Wood -- for instance, the
5 Woodcock-Johnson?

6 A Yes.

7 Q Okay. And so this would be, um, the actual
8 report where you -- where some of the questions
9 came from Mr. Kratz in regards to, for instance,
10 that one test and some other tests in regards to
11 cognitive abilities; correct?

12 A Correct.

13 Q Now, the actual test result of the
14 Woodcock-Johnson General Intellectual Ability was
15 what score?

16 A Seventy-eight.

17 Q And is that average? Below average? Or what --
18 what -- what would you, uh -- how would you
19 describe that?

20 A That would be a borderline to below average range.

21 Q Referring to that same exhibit on page two under
22 your observations and discussion?

23 A Yes.

24 Q Can you read the second sentence under that --
25 your observations and discussion of assessment

1 results?

2 A In the first paragraph?

3 Q Uh, the first paragraph under that subsection.

4 Correct.

5 A Okay. He guessed on the items that he was not sure

6 about at times.

7 Q So at times when he didn't know answers, you're

8 saying he guessed at them?

9 A Yes.

10 Q Now, the -- the attachment to that, uh -- to your

11 report in -- indicates actual test score results

12 and his percentile ranking; correct?

13 A Yes.

14 Q And under the observations and discussion

15 setting -- uh, section of your report, you

16 actually reference, um -- For instance, if you

17 can go down, oh, that second full paragraph,

18 probably three quarters of the way down, where it

19 indicates Brendan -- uh, Brendan obtained a

20 cognitive efficiency standard score of 73?

21 A Yes.

22 Q Okay. And the percentile ranking is what?

23 A Four.

24 Q What is the significance of that? What does that

25 mean?

1 A That means that on that particular area Brendan
2 scored as well as, or better than, four out of one
3 hundred students his age.

4 Q So if I'm -- Just to make sure I'm clear, 96
5 people would have scored better than -- out of a
6 hundred would have scored better than him in
7 regards to the cognitive efficiency test?

8 A As well as or better than him.

9 Q As well as or better?

10 A Um-hmm.

11 Q And right after that, you comment about his
12 short-term memory abilities? Can you read that
13 line?

14 A Brendan's short-term memory abilities are within the
15 well-below average to borderline range.

16 Q Now, you testified on cross that -- that is --
17 that -- that, generally, Brendan was in
18 mainstream, uh, classes at Mishicot; correct?

19 A Correct.

20 Q And -- but you would agree that, based on -- if
21 you need to review the IEPs -- his fourth grade
22 reading lev -- or, excuse me -- his reading level
23 was at a fourth grade level? Or do you recall
24 what level he was listed at reading?

25 ATTORNEY KRATZ: I'm going to --

1 A Uh --

2 ATTORNEY KRATZ: Judge, if I may
3 interpose an objection, I'm not sure that this
4 jury, um, needs to, um, consider anything about
5 Brendan's reading level. I didn't hear any
6 testimony about any reading ability.

7 ATTORNEY FREMGEN: The State that --
8 talked about math level. I think I can go --

9 THE COURT: We -- we --

10 ATTORNEY FREMGEN: -- into that.

11 THE COURT: Yeah. Uh, I'm going to
12 overrule the objection. We've -- we've heard a lot,
13 and the State put some of it in. Well, I'll
14 overrule the objection and she can answer the
15 question.

16 ATTORNEY KRATZ: Thank you.

17 Q (By Attorney Fremgen) And -- and if you need to
18 refresh --

19 A I --

20 Q -- your recollection --

21 A -- would need to refer to --

22 Q I believe --

23 A -- something.

24 Q -- it would be the first -- Well, let me get the
25 number for you. You should have the exhibit up

1 there. It's a separate exhibit from 217. I
2 believe it's the, uh -- the September 29, 2005,
3 IEP. I believe that is Exhibit 218?

4 A Yes.

5 Q Okay. And I believe if you refer, again, to page
6 I.11?

7 A Yes.

8 Q Okay. Does it indicate what his reading level
9 was?

10 A Brendan is currently reading at the end of fourth
11 grade level.

12 Q And what grade level was he in at that time?

13 A Tenth grade.

14 ATTORNEY FREMGEN: I have nothing else.

15 THE COURT: Any recross?

16 ATTORNEY KRATZ: That's all I have.

17 Thank you, Judge.

18 THE COURT: You may step down. Thank you.

19 Your next witness, Counsel?

20 ATTORNEY FREMGEN: Yes, Judge. We'll
21 call Blaine Dassey.

22 THE COURT: I showed this witness testified
23 with respect to Exhibits 217 to 221, 223 and 224.
24 Was there a 222?

25 DEFENDANT'S ATTORNEY: I would withdraw --

1 Well, I didn't actually offer 222. No, that was
2 another exhibit.

3 THE COURT: All right. Are you offering
4 these at this time?

5 ATTORNEY FREMGEN: Yes, I -- we would
6 offer those exhibits at this time.

7 THE COURT: Any objection?

8 ATTORNEY KRATZ: For the reasons they
9 were used, no, Judge.

10 THE COURT: Okay. And they're received for
11 that. Come on up here and just remain standing.
12 You're going to be sworn in as a witness.

13 THE CLERK: Please raise your right hand.

14 **BLAINE DASSEY,**

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

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

19 THE WITNESS: Blaine Dassey,
20 D-a-s-s-e-y.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY FREMGEN:

23 Q Blaine, how old are you?

24 A Eighteen.

25 Q And are you currently in school?

1 A Yes.

2 Q What school do you go to?

3 A Mishicot High School.

4 Q Who do you live with right now?

5 A Um, my mom, Barb.

6 Q Anyone else live in the house with you?

7 A Yeah. Scott Tadych.

8 Q And who's Scott?

9 A He's my step-dad.

10 Q Now, do you recall who was living with you on

11 October 31, 2005?

12 A Yes.

13 Q Can you tell us who was all living there?

14 A Um, my mom, uh, Tom -- Tom Janda, and me, Brendan,

15 Bobby and Bryan.

16 Q Now, you've mentioned Brendan. Do you recognize

17 Brendan?

18 A Yes.

19 Q Right here? That's your brother; right?

20 A Yes.

21 Q Okay. He's a year younger than you?

22 A Yes.

23 Q Do you recall -- Again, I asked if you recalled

24 where you lived on October 31, 2005, but do you

25 recall the events of that day?

1 A Yes.

2 Q And I'm going to have you think about that day

3 and answer some questions; all right?

4 A Yeah. Okay.

5 Q Were you in school that day?

6 A Yes.

7 Q Now, normally, how -- what time do you get home

8 from school?

9 A Three forty-five.

10 Q What time did you get home on that day?

11 A Three forty-five.

12 Q Was this a normal day for you then?

13 A Yes.

14 Q Did you come home with anyone in particular?

15 A No.

16 Q Does anyone else ride the bus with you?

17 A No.

18 Q No one else on the school bus?

19 A Except for Brendan.

20 Q Except for Brendan? Okay. And did Brendan come

21 home with you that day as well?

22 A Yes.

23 Q What did you guys do when you got off the bus?

24 A We walked down the -- the long road.

25 Q The long road?

1 A Yeah.

2 Q Okay. So --

3 A The --

4 Q I'm sorry.

5 A The road that our house is on.

6 Q Okay. So you -- does the bus -- doesn't drop you

7 off in front of your house?

8 A No.

9 Q Drops you off about how far away?

10 A About a half a mile.

11 Q How long does it take you to get from your house

12 to where they drop you off?

13 A About four minutes. Three minutes.

14 Q On that day, did you take about three or four

15 minutes to get home that day?

16 A Yes.

17 Q As you were walking with Brendan, did you notice

18 anything?

19 A No.

20 Q Did you guys talk about anything on the way from

21 the bus stop to -- to the house?

22 A Um, yes.

23 Q What did you talk about?

24 A About using the phone or computer.

25 Q Why did you guys talk about using the phone or

1 the computer?

2 A I don't know. Because that's all we do.

3 Q Something to talk about?

4 A Yeah.

5 Q Do you have just one phone and one computer?

6 A Yes.

7 Q Can't both be on at the same time?

8 A No.

9 Q When you got into the house, do you -- who got to

10 use the phone?

11 A I did.

12 Q What did you do?

13 A I called my friend, Jason.

14 Q And why did you call Jason?

15 A Because we were going to go trick or treating.

16 Q So this was Halloween; right?

17 A Yes.

18 Q So did Brendan plan on going trick or treating

19 with you?

20 A No.

21 Q Was anyone else home when you got home? You --

22 when you and Brendan got home?

23 A No.

24 Q Now, you said that you have a brother at that

25 time that lived with you as well?

1 A Yes.

2 Q And that was?

3 A Bobby.

4 Q Bobby. Bobby was not home?

5 A No.

6 Q But did Bobby get home at anytime that afternoon

7 when you were there?

8 A I don't remember. No. I don't think he was.

9 Q You don't think so?

10 A He wasn't -- He wasn't there.

11 Q So after you got done talking to Jason on the

12 phone, what did you do?

13 A Uh, went on the computer.

14 Q And how long were you on the computer?

15 A Um, about 30 minutes.

16 Q Now, do you know where Brendan was during this

17 time period?

18 A Yes. He was playing with the video games.

19 Q So you have a -- a separate -- do you have

20 separate rooms or are you in the same room?

21 A We're in the same room.

22 Q So the computer is the same room as the TV room

23 or the video room?

24 A Yes.

25 Q Did Brendan ever leave?

1 A No.

2 Q At what time did you actually leave, then, to
3 meet Jason?

4 A About 5:20.

5 Q Did you have supper?

6 A No. Yeah.

7 Q You did have supper?

8 A Yes.

9 Q Who made supper for you?

10 A Um, me and Brendan made it.

11 Q Between 3:45, when you left at 5:20, did you ever
12 see Brendan leave the house?

13 A No.

14 Q Were you watching him all the time?

15 A Yes.

16 Q You -- you keep track of your brother that way?

17 A Yeah.

18 Q You do? Okay. Now, you -- are you guys close?
19 Would you say you're close?

20 A Yes.

21 Q Did you notice, from about October 31, 2005 until
22 March of '06, whether Brendan was losing weight?

23 A Yes.

24 Q Did you guys talk about that?

25 A Yes.

1 Q Do you know why he was losing weight?

2 A Because, um, everybody he knew would make fun of him

3 because he's fat and stuff.

4 Q So he wanted to lose weight so no one would make

5 fun of him?

6 A Yes.

7 Q Did -- That same period of time, did he seem to

8 be overly emotional? Do you know what that

9 means?

10 A Yeah.

11 Q Do you -- Would you -- Did he appear to be overly

12 emotional?

13 A Yes.

14 Q He did? Did he cry a lot?

15 A Not really. He was just sad and stuff.

16 Q Okay. Now, was -- is that normally Brendan's

17 character? To be a little sad?

18 A I don't know. He was shy. He wouldn't -- He doesn't

19 talk a lot.

20 Q To other people?

21 A Yeah.

22 Q What about to you?

23 A I don't think he -- I don't know.

24 Q Now, I -- I asked you earlier if you ever saw

25 Brendan go leave the house until you left to go

1 meet Jason at 5:20?

2 A Yeah.

3 Q Did you ever leave the house?

4 A No.

5 Q Never went outside at all?

6 A No.

7 Q At anytime did you guys look out the window?

8 A No.

9 Q Do you know if Brendan looked out the window?

10 A No.

11 Q You me -- you mean you don't know if he did or he

12 didn't look out the window?

13 A No, he didn't. He was playing his video games.

14 Q Did, uh, Steven Avery -- You know who Steven

15 Avery is; right?

16 A Yes.

17 Q And who is he?

18 A He's my uncle.

19 Q And how far away does he live from you?

20 A He's our neighbor. Like right across --

21 Q Pretty close or --

22 A Yeah.

23 Q -- miles?

24 A Pretty close. Pretty close.

25 Q Couple hundred feet maybe?

1 A Yeah.

2 Q Did he ever come over to your house?

3 A Yeah.

4 Q Between 3:45 and --

5 A No.

6 Q -- 5:20 that day --

7 A No.

8 Q You -- Did anyone come over to the house at

9 that --

10 A No.

11 Q -- that day? Now, what time did you get home

12 that night?

13 A About 11.

14 Q About 11?

15 A Yeah.

16 Q Did you see Brendan when you got in?

17 A Yes.

18 Q Where was he?

19 A He was in his bed.

20 Q Thank you, Blaine. I have nothing else.

21 THE COURT: Cross.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY KRATZ:

24 Q Blaine, do you remember testifying in the trial

25 of Steven Avery?

1 A Yes.

2 Q Do you remember in that trial being asked the

3 question, when you got home at 11 or 11:30, if

4 you saw Brendan in your bedroom?

5 A Yes.

6 Q Do you remember being asked that question?

7 A Yes.

8 Q What did you tell the jury at that time?

9 A That I didn't see him.

10 Q That you didn't see him; right?

11 A (No verbal response.)

12 Q Now, in the last four weeks has your memory

13 gotten better?

14 A Yeah.

15 Q It's gotten better in the last --

16 A I --

17 Q -- four weeks?

18 A I -- I can remember.

19 Q You can remember better now?

20 A Yeah.

21 Q I'm sorry?

22 A Yes.

23 Q Okay. Has nothing to do with your brother being

24 on trial this time, does it?

25 A No.

1 Q You said that you went trick or treating on the
2 31st. How old are you?

3 A Eighteen. Eighteen.

4 THE COURT: Could you pull that
5 microphone a little closer, please?

6 THE WITNESS: Yes.

7 Q (By Attorney Kratz) Thank you, Blaine. On
8 October 31, 2005, how old were you?

9 A Um, 17.

10 Q And who, at age 17, were you going trick or
11 treating with?

12 A My friend, Jason, and his little brothers.

13 Q Where were you going trick or treating?

14 A Two Rivers. Manitowoc.

15 Q Now, in that community, that is, in Two Rivers,
16 um, trick or treating is on, actually, Halloween
17 Day; is that right?

18 A Yes.

19 Q Are you familiar with, uh, communities that have
20 trick or treating perhaps the day earlier? On
21 Sunday the day before?

22 A Yes.

23 Q And do you know around, um, the Mishicot area if
24 there were any communities, as you think back,
25 that had trick or treating on that Sunday?

1 A I don't remember.

2 Q Did you go trick or treating on that Sunday?

3 That is, the day before?

4 A No.

5 Q All right. You told Mr. Fremgen that as you

6 walked home, or as you walked down the -- the --

7 the path, and I'm going to show you what has been

8 received as Exhibit No. 71, as you walked down

9 this path, this road actually goes, uh, all the

10 way up towards your grandmother's house; is --

11 A Yes.

12 Q -- that right? You have to wait until I --

13 A Okay.

14 Q -- I -- I finish asking the question; all right?

15 But as you walked down towards your house, you

16 told Mr. Fremgen that you didn't see anything, or

17 that you didn't see anything unusual. You

18 remember saying that today?

19 A Yes.

20 Q As you think back now, uh, do you now remember

21 something that you saw before you went into the

22 house?

23 A Yeah.

24 Q Why don't you tell the jury what you saw?

25 A I seen Steven Avery walking to the burn barrel with a

1 plastic bag in his hand and he dropped it in there.

2 Q And Steven Avery's your uncle; is that right?

3 A Yes.

4 Q Now, when Steven Avery you said was walking, um,

5 towards a burn barrel, I'm going to, again, have

6 you look at Exhibit No. 71, Blaine, and show you,

7 uh, what is, um, just kind of a -- uh, to the

8 center and to the right of that exhibit, uh, what

9 looks like a burn barrel. Is that the burn

10 barrel that you're talking about?

11 A Yes.

12 Q When you saw your Uncle Steven taking something

13 and putting it in that burn barrel, did you

14 notice if that burn barrel was burning? That is,

15 uh --

16 A Yes.

17 Q -- was it on fire?

18 A Yes.

19 Q Yes, it was already burning?

20 A Yes.

21 Q And when you told this jury that you saw him

22 walking towards that burn barrel, did you see him

23 walking from his trailer towards that burn

24 barrel?

25 A Yes.

1 Q You said that you saw him put something in it.
2 After putting something in that burning barrel,
3 where did your Uncle Steve go?
4 A I think he went back to his house.
5 Q Did you see him turn around and go back to his
6 trailer?
7 A Yes.
8 Q All right. Now, you told this jury today that
9 you left at about 5:20 to go to your friend,
10 Jason's; is that right?
11 A Yes.
12 Q How did you get to Jason's that day?
13 A His mom, Carmen Wiensch.
14 Q His mother's name is Carmen?
15 A Yeah.
16 Q And her last name is Wiensch; is that --
17 A Yes.
18 Q -- right? W-i-e-n-s-c-h?
19 A Yes.
20 Q Is that right? Okay. Now, where did she pick
21 you up?
22 A At the end of -- where the bus drops us off.
23 Q So you had to walk a ways from your trailer,
24 which is on Exhibit No. 71 here, back up that
25 road for Mrs. Wiensch to pick you up; is that --

1 A Yes.

2 Q -- right? You have to wait until I'm done asking
3 the question, okay?

4 A Okay.

5 Q Now, did she pick you up at 5:20 or did you leave
6 your house at 5:20?

7 A She picked me up at 5:20.

8 Q So is it fair to say that you left your house
9 sometime before that?

10 A Yeah.

11 Q Now, you're telling us today that you got home at
12 about what time?

13 A Eleven.

14 Q When you got home at about 11:00, why don't you
15 tell the jury what you saw before you walked into
16 your trailer?

17 A I seen a person standing out by the -- or, uh --
18 bonfire.

19 Q Now, up until now, we haven't heard about you
20 seeing a bonfire. Why don't you tell us about
21 that?

22 A Say that question over?

23 Q Sure. Why don't you tell the jury about the
24 bonfire that you saw?

25 A Um, it was about five-foot high.

1 Q All right. Can you tell the jury where you saw
2 that bonfire?
3 A Behind Steven's garage.
4 Q All right. I'm going to have you look at Exhibit
5 No. 71 again, and this, uh, dark area right to
6 the left of the screen, uh, is that the area that
7 you saw that fire?
8 A Yes.
9 Q Now, when you came walking into your house, um,
10 were there any obstructions to your view of that
11 bonfire? In other words, was there anything that
12 blocked your view between you and that fire?
13 A No.
14 Q You're telling this jury that you saw somebody
15 standing by that bonfire; is that --
16 A Yes.
17 Q -- right? You have to wait until I'm done asking
18 the question. Were you able at that time to
19 identify who it was who was standing by that
20 bonfire?
21 A Yeah. It was a bigger guy.
22 Q A bigger --
23 A Steven --
24 Q -- guy?
25 A -- Steven's size.

1 Q Steven's size?

2 A Yeah.

3 Q All right. Again, do you remember about four
4 weeks ago being asked that same question?

5 A Yes.

6 Q What did you tell the jury about four weeks ago?

7 A That I said that I don't know who was standing out
8 there.

9 Q All right. But after talking to Mr. Fremgen, and
10 after being called in your brother's case, you
11 now think that it was a bigger guy. Somebody
12 like Steven; is that --

13 A Yes.

14 Q -- right?

15 ATTORNEY FREMGEN: Objection to the
16 question. There is no evidence that this witness
17 talked about --

18 THE COURT: I -- I --

19 ATTORNEY KRATZ: I can ask it a -- a
20 different way.

21 THE COURT: Please do. I -- and, uh, I
22 direct that the jury not take notice of that
23 question.

24 ATTORNEY KRATZ: That's fine.

25 Q (By Attorney Kratz) Let me ask you this, Blaine,

1 between that hearing, the Steven Avery trial, and
2 today, did you, in fact, talk to Mr. Fremgen?
3 A No.
4 Q You haven't talked to Mr. Fremgen or
5 Mr. Edelstein?
6 A No.
7 Q Uh, so there hasn't been any conversation at all
8 between -- between you and them; is that right?
9 A No.
10 Q All right. Between that hearing, though, and
11 today, you agree that your testimony's different;
12 is that true? I'll be more specific if you want
13 me to be.
14 A Yeah.
15 Q About the person that you saw out by the fire
16 that night? Yes?
17 A Yes.
18 Q And your testimony's different as to whether or
19 not your brother, Brendan, was home. That's
20 different than it was four weeks ago; right?
21 A Yes.
22 Q You said that you ate at home that night. That
23 is, in your trailer. Is that your testimony?
24 A Yes.
25 Q Do you remember on the 7th of November, that's

1 like a year-and-a-half ago, being interviewed by
2 two agents of the Division of Criminal
3 Investigation?
4 A Yes.
5 Q Do you remember telling or being asked by those
6 agents where you ate dinner that night?
7 A Yes.
8 Q Do you remember what you told those agents that
9 night?
10 A No, I don't remember.
11 Q Remember telling them that you had dinner at your
12 friend, Jason's, house that night?
13 A No.
14 Q No? You don't remember telling them that?
15 A No.
16 Q Okay. Now, your Uncle Steve had a vehicle, which
17 was called a Suzuki Samurai. Do you know what
18 I'm talking about?
19 A Yes.
20 Q Let me just get to that exhibit number. I'm
21 showing you Exhibit No. 117. Do you recognize
22 that vehicle?
23 A Yes.
24 Q What is that?
25 A That's his Suzuki.

1 Q And, uh, you knew that to be your Uncle Steve's
2 Suzuki?
3 A No. It's my grandpa's.
4 Q Okay. I'm sorry. But you recognize it in this
5 photo, at least, to be in your Uncle Steve's
6 garage; is that right?
7 A Yes.
8 Q Now, on the 31st, that is, on Halloween, do you
9 know where that Suzuki was parked?
10 A Yes.
11 Q Can you tell the jury, please, where on the 17th
12 that was parked?
13 A It was on the outside on the left side of the garage.
14 Q All right. I'm going to show you what's been
15 received as Exhibit No. 67. And although -- In
16 that photo we see it backed into the garage. The
17 31st, that is, on the Halloween when you got
18 home, you remember seeing that Suzuki outside of
19 the garage, uh, to the left, or what would be to
20 the east, of your Uncle Steve's garage; isn't
21 that right?
22 A Yes.
23 Q Now, do you know how that Suzuki Samurai got put
24 into your Uncle Steve's garage and when that
25 happened?

1 A No.

2 Q You know that it was just sometime after
3 Halloween? That is, after the 31st --

4 A Yes.

5 Q -- is that right? Okay. When you left at, uh,
6 5:00, Blaine -- I'm sorry, uh, sometime before
7 5:20. I guess you didn't say 5, you said
8 sometime before 5:20. Remember seeing a fire
9 behind Steve's garage even then? Even a little
10 after 5:00?

11 A No.

12 Q Did you look? In other words, do know if there
13 was fire or did you just not see it?

14 A No, I didn't look. I didn't see it.

15 Q That -- It's two different answers. Did you
16 look?

17 A No.

18 Q Okay.

19 ATTORNEY KRATZ: If I could have just a
20 moment, Judge? I have no further questions,
21 Judge. Thank you.

22 THE COURT: Any redirect?

23 ATTORNEY FREMGEN: Please.

24 **REDIRECT EXAMINATION**

25 BY ATTORNEY FREMGEN:

1 Q When Mr. Kratz was asking you some questions, you
2 said that, uh, you had seen Steven, your Uncle
3 Steven, dropping a bag into a burn barrel;
4 correct?

5 A Yes.

6 Q And he showed you the picture, and you agree that
7 that was the burn barrel; correct?

8 A Yes.

9 Q Now, the -- When was this? When did you see him
10 throwing -- dropping the bag into the burn
11 barrel?

12 A When we were walking down the -- the driveway.

13 Q And by "we" who are you -- who do you mean?

14 A Me and Brendan.

15 Q So you and Brendan were walking down back from
16 the school bus?

17 A Yes.

18 Q Sometime after 3:45?

19 A Yes.

20 Q You indicated that Jason's mom picked you up
21 about 5:20?

22 A Yes.

23 Q But that would have been down by where the bus
24 drops you off and picks you up?

25 A Yes.

1 Q And you said it takes about how long to get down
2 that road?
3 A Three or four minutes.
4 Q So you would have left sometime three or four
5 minutes before 5:20?
6 A Yes.
7 Q Mr. Kratz was asking you if you recalled speaking
8 to, uh, law enforcement on November 7; correct?
9 Of --
10 A Yes.
11 Q -- 2005; correct?
12 A Yes.
13 Q I know that's a long time ago. But you in -- he
14 indicated to you that your answers seemed to be
15 different from now from back then; correct?
16 A Yes.
17 Q And do you agree that some of your answers are
18 different?
19 A Yes.
20 Q Do you recall telling law enforcement back then
21 that you actually got home between 9:30 and 10
22 that night?
23 A No.
24 Q You don't recall saying that? Do you recall
25 saying you actually saw Brendan when you came

1 home that night?

2 A Yes.

3 Q Okay. And that was on November 7? To law
4 enforcement?

5 A Yes.

6 Q Okay. Thank you.

7 ATTORNEY FREMGEN: Nothing else, Judge.

8 ATTORNEY KRATZ: I have nothing. Thank
9 you, Judge.

10 THE COURT: You may step down.

11 ATTORNEY FREMGEN: I do have one more
12 witness if, uh -- It should be very short.

13 THE COURT: Very good. You may call that
14 witness.

15 THE CLERK: Please raise your right hand.

16 **MICHAEL KORNELY,**

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: It's, um, Michael, or Mike,
22 Kornely, K-o-r-n-e-l-y.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY FREMGEN:

25 Q Mike, what do you do for a living?

1 A Uh, I work as a sales manager for a company out of
2 Milwaukee, and I also do some yard work as an extra
3 job.
4 Q And do you generally live in the Manitowoc/Two
5 Rivers area?
6 A Yes, I live in Francis Creek.
7 Q Are you familiar with, uh, Brendan Dassey?
8 A Yes.
9 Q And how do you know Brendan?
10 A Um, Brendan is, uh -- Blaine, he works for me
11 currently, and, uh, Blaine's brother, and Brendan
12 worked for me for a period of time.
13 Q And how -- how long have you known Brendan?
14 A About three-and-a-half years.
15 Q Would you be able to -- Well, for instance,
16 hypothetically, you would have called him on the
17 phone, would you be able to recognize his voice?
18 A Yes.
19 Q Now, do you know -- do you recall where you were
20 on October 31, 2005?
21 A I was in Birmingham, Alabama.
22 Q On that -- at -- on that night, or at some point
23 in -- on October 31, 2005, did you contact the
24 Dassey residence?
25 A Yes, I did.

1 Q By that I mean did you call them?

2 A Yes. I -- I called to talk to -- to Blaine to see if

3 he was going to come to work on the following

4 weekend, because he hadn't worked, uh, with me the

5 weeks before -- the two weeks before. Um, said that

6 he was putting on a roof on one of his uncle's

7 cottages up north and it was working with Steven.

8 Q And do you recall what time it was that you

9 called?

10 A It was around 6:00. I think it probably was about --

11 between quarter to six and maybe ten to six. I think

12 it was before six.

13 Q Did you speak with Blaine?

14 A No. I, uh, spoke with Brendan and asked him if

15 Blaine was there, and, uh, he said, no, that he went

16 trick or treating. And I kind of was taken aback. I

17 said, well, he can't be trick or treating, he's 17.

18 And then he told me that he had taken his friend,

19 Jason, uh, two brothers, and they went trick or

20 treating together.

21 Q How long did the conversation between you and

22 Brendan take place?

23 A Somewhere around probably five minutes.

24 Q And do you recognize that voice on the other line

25 as Brendan?

1 A Oh, yes. Yes.

2 ATTORNEY FREMGEN: I have nothing else
3 for this witness.

4 THE COURT: Cross.

5 **CROSS-EXAMINATION**

6 BY ATTORNEY GAHN:

7 Q Good morning, sir.

8 A Good morning.

9 Q How long, Rick, (sic) had you been in Birmingham,
10 Alabama?

11 A I got there on, uh, Monday, and I was there until
12 Thursday.

13 Q And, um, did you call from -- I'm sorry. Were
14 you staying, like, at a hotel or something?

15 A Yes. I was staying at the Sheraton. The Marriott
16 Court Yard.

17 Q And did you call from the hotel phone or did you
18 have a cell phone or what?

19 A I don't exactly remember that. I'm quite sure it was
20 my cell phone.

21 Q And at anytime since, uh, the day that you made
22 that call, did anyone ask you to check your cell
23 phone records for the exact time of that call?

24 A Yes, I think, um, Brendan's first attorney asked me
25 if I had a record for it.

1 Q And, um, do you have a record for the time that
2 you made that call, sir?

3 A I -- I didn't find that telephone call on my Sprint
4 record, which means I could have made it through the
5 hotel operator. Sometimes my phone goes dead at the
6 end of the day. And I could have made it through the
7 hotel. I -- I honestly wish I could recall. I just
8 can't.

9 Q Do you recall, um, on November 7 of 2005, which
10 would have been shortly after, um -- what, seven
11 days after October 31?

12 A Um-hmm.

13 Q Where two agents did come to your home to talk to
14 Blaine?

15 A Yes.

16 Q And do you recall telling those agents that you
17 thought the call may have been around 5:30?

18 A You know, I -- I -- I don't remember that. That is
19 possible. I thought it was 5:30, but I got back to
20 the hotel, and I made the call, and it could have
21 been between 5:30 and 6:00.

22 Q And for that fact, could have been between 5:15
23 and 6:15? I -- I'm just asking you, sir.

24 A Yes, it could have been, because my day usually ends
25 sometimes around there, and by the time I get back to

1 the hotel it might be after five.

2 Q So you -- sometime after -- You know it was
3 sometime after five, though, is that fair to say?

4 A Yes. Um, I -- I thought Brendan told me that he left
5 about 5:10 or something, so I would have already
6 missed Blaine then. So, you know, because Blaine
7 wasn't there for me to talk to him.

8 Q So the call could have been at 5:15 for all
9 you -- as you recall? Is that fair to say?

10 A Um, yeah, it's possible.

11 Q Okay.

12 A It is possible.

13 Q All right. I thank you, sir. Thank you for
14 coming today.

15 ATTORNEY GAHN: That's all I have, Your
16 Honor.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY FREMGEN:

20 Q I just have one question in follow-up to, um --
21 Mr. Gahn asked you about meeting with law
22 enforcement as to that time frame when you made
23 that phone call; correct? You had --

24 A Yes.

25 Q Remember that --

1 A Yes.

2 Q -- conversation? And you said -- Or the question
3 was asked of you, do you recall telling them it
4 was 5:30? And you said, maybe?

5 A Yeah. It seemed closer to six because, you know, I
6 would end my day probably around five. I -- I -- I
7 wish I could recall and I don't. But I thought it
8 was closer to six, because what Brendan had said to
9 me is, well, Blaine had already left by about ten
10 after five or so, and so this seemed like, you know,
11 it was a while, like he was gone almost an hour
12 already.

13 Q So it was sometime after Blaine had left as far
14 as you recall from the conversation?

15 A Yes.

16 Q And do you recall telling law enforcement it was
17 5:30 or 5:45? That that was the time frame you
18 gave to them originally?

19 A It's possible I could have told them that. I -- I
20 could be off like that.

21 Q Okay. Thank you, very much.

22 THE COURT: Any recross?

23 ATTORNEY GAHN: No, Your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

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ATTORNEY FREMGEN: That's the last
witness for today that we have available.

THE COURT: All right. Then we will
adjourn until Monday morning at 8:30. Ladies and
gentlemen, once again, don't talk about this amongst
yourselves or anything about this case, or to anyone
else. Thank you. Have a nice weekend. We'll see
you Monday.

(Court stands adjourned at 11:44 a.m.)

1 STATE OF WISCONSIN)
2) SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.

16
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18
19 Jennifer K. Hau
20 Jennifer K. Hau, RPR
21 Official Court Reporter
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25

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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF,

JURY TRIAL
TRIAL DAY 7

6 vs.

Case No. 06 CF 88

7 BRENDAN R. DASSEY,

8 DEFENDANT.

9
10 **DATE:** APRIL 23, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

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

16 THOMAS FALLON
Special Prosecutor
17 On behalf of the State of Wisconsin.

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

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

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

24 BRENDAN R. DASSEY
Defendant
25 Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 8:34 A.M. Jury out)

2 THE COURT: Good morning, ladies and
3 gentlemen, Counsel. This is State of Wisconsin vs.
4 Brendan Dassey, 06 CF 88. Appearances, please.

5 ATTORNEY FALLON: Good morning, Your Honor.
6 May it please the Court, the State continues in its
7 appearance by Special Prosecutors Ken Kratz, Norm
8 Gahn, Tom Fallon.

9 ATTORNEY FREMGEN: Attorney Mark Fremgen
10 appears with Attorney Ray Edelstein. The defendant
11 appears in person.

12 THE COURT: Are you set to proceed, uh,
13 Mr. Fremgen?

14 ATTORNEY FREMGEN: Yes, Judge, we, uh -- at
15 this time our first witness will be the defendant,
16 but we need the Court to proceed with the colloquy
17 with Mr. Dassey to ensure that, um, he is making the
18 decision freely, voluntarily to testify.

19 THE COURT: All right. If you'd move the
20 microphone over there. Mr. Dassey, can you hear me?

21 THE DEFENDANT: Yes.

22 THE COURT: Uh, it's my understanding you
23 wish to testify?

24 THE DEFENDANT: Yes.

25 THE COURT: You understand that you have a

1 constitutional right to testify?

2 THE DEFENDANT: Yes.

3 THE COURT: You have a constitutional right
4 not to testify?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that
7 decision, whether or not to testify, is for you, and
8 you alone, to make?

9 THE DEFENDANT: Yes.

10 THE COURT: That doesn't mean that you
11 can't get advice from family, from friends, from
12 your lawyers, but you understand, in the end, it's
13 your decision?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anyone made any threats or
16 promises to you in an attempt to influence your
17 decision?

18 THE DEFENDANT: No.

19 THE COURT: Have you discussed your
20 decision, whether or not to testify, with your
21 lawyers?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you made a decision as to
24 whether or not you want to testify?

25 THE DEFENDANT: Yeah.

1 THE COURT: What is that decision?

2 THE DEFENDANT: That I want to.

3 THE COURT: You want to testify?

4 THE DEFENDANT: Yeah.

5 THE COURT: All right. Uh, let me address
6 counsel. Mr. Fremgen, have you had sufficient
7 opportunity to thoroughly discuss with your client,
8 uh, the case and his decision whether or not to
9 testify?

10 ATTORNEY FREMGEN: I can say for the record
11 that we have spoken at least a half dozen times,
12 specifically, on that one issue. Um, and
13 recently -- as recently as yesterday.

14 THE COURT: Are you convinced that he
15 understands the implications of him testifying and
16 not testifying?

17 ATTORNEY FREMGEN: I believe so.

18 THE COURT: Are you satisfied that the
19 decision he announced on the record here is being
20 made knowingly, intelligently and voluntarily?

21 ATTORNEY FREMGEN: I don't know if I can
22 answer that question, Judge.

23 THE COURT: Well, is --

24 ATTORNEY FREMGEN: I believe he's -- I'm
25 sorry. I believe he knows what he's doing and I

1 believe he's voluntarily agreeing to do it.

2 THE COURT: All right. So it's knowingly
3 and voluntarily being made?

4 ATTORNEY FREMGEN: Yes, Judge.

5 THE COURT: You're -- you're suggesting
6 that, uh, it is being made by him, and him alone,
7 in this instance?

8 ATTORNEY FREMGEN: That I don't know if I
9 can answer either.

10 THE COURT: All right. The Court will
11 find, based on this record, that the, uh, decision
12 of this defendant to testify is being made, uh,
13 knowingly and voluntarily. The Court has, uh, had a
14 colloquy with him. The Court, uh, uh, believes that
15 the defendant has -- has made this decision, realize
16 it's his alone to make -- before I go through this,
17 Counsel?

18 ATTORNEY KRATZ: Given Mr. Fremgen's,
19 um --

20 THE COURT: Reticence?

21 ATTORNEY KRATZ: -- reticence, uh,
22 perhaps, uh, the Court should inquire of
23 Mr. Dassey if -- if there isn't something else,
24 or if there, uh, uh, isn't an explanation for --
25 for that. Our concern, as you know, Judge, is to

1 make this complete record. Uh, if the Court is,
2 uh, reluctant to do so, I certainly understand
3 that, but that was our -- our, um --

4 THE COURT: I -- I understand, uh, the
5 State's concern. Mr. Fremgen has positively averred
6 that the decision is being made knowingly and
7 voluntarily. I've gone through the colloquy with --
8 with Mr. Dassey. I -- I don't know at this stage,
9 uh, absent, uh, getting into matters that, uh, I
10 have no business inquiring in, I can be doing.

11 ATTORNEY FREMGEN: If -- if I can add,
12 Judge --

13 THE COURT: Go ahead.

14 ATTORNEY FREMGEN: -- you -- you had asked
15 if I thought this was an intelligent decision?

16 THE COURT: Correct.

17 ATTORNEY FREMGEN: And -- and not that
18 intelligence is different, viewed from -- from a
19 legal standpoint than common sense, I -- I don't
20 know if I can honestly say that if there -- if -- if
21 it's being made based upon, um, reasonable and
22 logical, uh, decision-making.

23 And the Court also inquired as to
24 whether Mr. Dassey has talked to others besides
25 ourselves.

1 THE COURT: Right.

2 ATTORNEY FREMGEN: And I'm sure he has. In
3 fact, I know he has. And, for that reason, I can't
4 say for certain that the decision is solely his. I
5 can say to you -- to this Court, that he has told us
6 this is his decision, and he wishes to pursue
7 testifying.

8 THE COURT: Well, let me, then, reask
9 Mr. Dassey. Would you pull the microphone over
10 there? Mr. Dassey, I've told you that, in the end,
11 this decision is yours, and yours alone, to make;
12 correct?

13 THE DEFENDANT: Yes.

14 THE COURT: And you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Uh, you've talked to other
17 people about this other than your lawyers?

18 THE DEFENDANT: Yes.

19 THE COURT: Uh, have those -- are you being
20 forced to do this in any way do you feel?

21 THE DEFENDANT: No.

22 THE COURT: You're doing this voluntarily?

23 THE DEFENDANT: Yes.

24 THE COURT: You understand there may be
25 some risks to your testifying?

1 THE DEFENDANT: Yeah.

2 THE COURT: And you're willing to take
3 those risks in testifying?

4 THE DEFENDANT: Yes.

5 THE COURT: No one's promised you anything
6 in order to get you to do this?

7 THE DEFENDANT: No.

8 THE COURT: You're not threatened in any
9 way?

10 THE DEFENDANT: No.

11 THE COURT: And this is -- in the end, it
12 is your decision; is that correct?

13 THE DEFENDANT: Yes.

14 ATTORNEY KRATZ: That -- that's fine,
15 Judge. Thank you.

16 THE COURT: Yeah. I don't know where else
17 we can go here. So, let's, uh -- we'll get the jury
18 in and let's proceed.

19 ATTORNEY KRATZ: There's one -- one
20 other thing, Judge. The, uh -- as long as the
21 jury is out, I had promised the Court and, uh,
22 Madam Clerk that, uh, there was a videotape clip
23 of an answering machine that I -- that I think
24 was on the first day of testimony, that we would
25 have a copy of that made and marked to make, uh,

1 part of the record. Over the weekend, we've had
2 an opportunity to make a copy of that, and I just
3 wanted to complete the record by providing a copy
4 of that, uh, uh, clip as I had promised early on.

5 THE COURT: Had we previously marked it as
6 an exhibit?

7 ATTORNEY KRATZ: No.

8 THE CLERK: No.

9 THE COURT: All right. So this will be
10 Exhibit 225?

11 THE CLERK: Yes.

12 ATTORNEY KRATZ: That's all we have,
13 Judge. Thank you.

14 THE COURT: All right. Specifically, it's
15 an exhibit of -- it's a CD of a -- a --

16 THE CLERK: It's a CD of the answering
17 machine --

18 THE COURT: All right.

19 THE CLERK: -- clip.

20 THE COURT: All right. We can bring the
21 jury in, then.

22 THE CLERK: So that's received as --

23 THE COURT: Yeah.

24 (Jury in at 8:42 a.m.)

25 THE COURT: Morning ladies and gentlemen.

1 Be seated. Uh, you may proceed.

2 ATTORNEY FREMGEN: Judge, at this time
3 we'll call Brendan Dassey.

4 THE CLERK: Please raise your right
5 hand.

6 **BRENDAN DASSEY,**
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

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

11 THE WITNESS: Brendan Dassey, D-a-s-s-e-y.

12 **DIRECT EXAMINATION**

13 BY ATTORNEY FREMGEN:

14 Q Morning, Brendan.

15 A Morning.

16 Q How old are you, Brendan?

17 A Seventeen.

18 Q Where were you living on October 31, 2005?

19 A With my mom.

20 Q Where, exactly, was that located?

21 A At 12930-A Avery Road.

22 Q What city is that in?

23 A Two Rivers.

24 Q And how long have you lived at that address?

25 A Six or seven years.

1 Q Now, there are others that live around you; is
2 that right?

3 A Yes.

4 Q Is this all family?

5 A Yes.

6 Q Who -- who lived -- well, who all lived in that
7 general area?

8 A Me, my family, Steven, Chuckie, my grandma and
9 grandpa --

10 Q Who's Chuckie?

11 A One of my uncles.

12 Q Okay. So it was all family that lived in that
13 area?

14 A Yes.

15 Q Was it adjacent to some property? A business?

16 A Yes.

17 Q What business was that?

18 A The Avery Auto Salvage.

19 Q Okay. Now you said that Steven, that's your
20 uncle?

21 A Yes.

22 Q And he lived where, exactly, in relation to your
23 house?

24 A Next door.

25 Q About how far next -- is next door from your

1 house?

2 A Few hundred -- hundred or two hundred or three

3 hundred yards away.

4 Q Do you know yards or feet? Do you know the

5 difference between the two?

6 A Not really.

7 Q Okay. Was it farther than a football field away

8 from you?

9 A No.

10 Q So less than a football field away from you?

11 A Yeah.

12 Q Now, who else lived in the house with you and

13 your mom?

14 A Me, my brother, my mom.

15 Q You said your brother or brothers?

16 A All three of them.

17 Q Okay. And who -- who are they? What are the

18 names?

19 A Bobby, Brian and Blaine.

20 Q So your mom and the four brothers all lived

21 there?

22 A Yes.

23 Q And how old is Blaine?

24 A Ten months older than me.

25 Q In rela -- in the house, in relation to where you

1 slept, where did he sleep?

2 A In the same room.

3 Q You guys shared a room?

4 A Yes.

5 Q What about Bobby? How old is Bobby?

6 A Three years older.

7 Q And did he also have a bedroom?

8 A Yes.

9 Q Did he share with anyone?

10 A No.

11 Q And -- and you said Brian also lived there?

12 A Yes.

13 Q And -- and where did he -- uh, how old is Brian?

14 A Four years young -- older.

15 Q So you're the youngest?

16 A Yes.

17 Q On October 31, 2005, were you attending school?

18 A Yes.

19 Q And where did you go to?

20 A Mishicot High School.

21 Q What level grade were you in?

22 A At the time?

23 Q Yes.

24 A Tenth.

25 Q Now, do you know what the difference between

1 mainstream and nonmainstream classes is?

2 A Yes.

3 Q Okay. Were you in the mainstream classes at

4 Mishicot or nonmainstream?

5 A In both.

6 Q Okay. So a little -- are some of them

7 nonmainstream?

8 A Yeah.

9 Q It's also -- is it also sometimes referred to as

10 "special education" class?

11 A Yes.

12 Q Okay. What kind of grades did you receive when

13 you were in school?

14 A Usually C's, D's and F's.

15 Q Did you belong to any clubs at school?

16 A No.

17 Q Any extracurricular activities at school?

18 A No.

19 Q Did you work while you were going to school?

20 A Can you repeat that?

21 Q Did you work while you were going to school?

22 A No.

23 Q So after school, what would you normally do?

24 A Usually play video games.

25 Q Where at?

1 A At home.

2 Q So on October 31, 2005, was it a normal day for
3 you?

4 A Yes.

5 Q And by "normal", about what time would you get
6 home -- get home from the school bus?

7 A Three forty-five.

8 Q And you did on that day as well?

9 A Yes.

10 Q Was anyone else with you on the bus that day?

11 A Just Blaine.

12 Q Is that normal, you and Blaine take the bus
13 together?

14 A Yes.

15 Q Where does it drop you off at the, uh, um -- does
16 it drop you off at your house?

17 A No.

18 Q Where does it drop you off?

19 A By our mail boxes.

20 Q Okay. About how far away is that from your
21 house?

22 A About a quarter mile.

23 Q How long does it take you to get from where the
24 bus drops you off to get to your house?

25 A Well, if you walk, it takes five minutes, but if you

1 run, it probably takes you two.

2 Q Do you normally run home from the bus?

3 A Sometimes.

4 Q On October 31, 2005, did you run or walk home?

5 A I don't recall.

6 Q Now, did you go directly home from getting off

7 the bus that day?

8 A Yes.

9 Q Did you see anyone when you were walking down the

10 bus -- down to -- from the bus stop to your

11 house?

12 A No.

13 Q Other than Blaine; right?

14 A Yes.

15 Q What did you do when you got home that day?

16 A I played video games.

17 Q Do you know what Blaine was doing?

18 A He was on the phone.

19 Q Was that something you talked about beforehand?

20 A Yes.

21 Q Why -- why would that topic of conversation come

22 up while you were walking from the bus stop?

23 A Because Blaine wanted to use the phone, and I wanted

24 to go on the computer.

25 Q Did you have one connection in the house?

1 A Yes.

2 Q So if someone's on the phone, you can't be on the
3 computer?

4 A Yes.

5 Q Do you know why Blaine needed to use the phone?

6 A To call his friend.

7 Q Do you know why?

8 A To go -- to see if he was going trick or treating.

9 Q So something you guys talked about?

10 A Yes.

11 Q You didn't go -- want to go trick or treating
12 that night?

13 A I was deciding if I wanted to.

14 Q So, now, you were at home playing video games.
15 You said this is normal for you?

16 A Yes.

17 Q Do you remember what video game you were playing?

18 A I believe it was *American Chopper*.

19 Q How do you recall or how -- why would you think
20 that that's the game you were playing?

21 A Because some of the games that we have now are too
22 new.

23 Q Okay. So that was not a new game at that time?

24 A No.

25 Q How long were you playing video games after you

1 got off the bus at 3:45?

2 A About two hours.

3 Q What did you do after you were done playing video

4 games?

5 A I ate some food.

6 Q Okay. Did you make it yourself?

7 A Yes.

8 Q Where did you go to make food for yourself?

9 A In the kitchen.

10 Q How far from your bedroom is that?

11 A Twenty feet.

12 Q Do you know what time it was when you went to

13 make food for yourself?

14 A Around 5:00.

15 Q How do you know it was around five when you went

16 to the kitchen?

17 A Because I looked on the -- the oven for the time.

18 Q Okay. Was anyone else in the kitchen at that

19 time?

20 A Not that I recall.

21 Q Any time while you were eating?

22 A Just Blaine.

23 Q Okay. And -- and, uh, what was Blaine doing?

24 A He was in the kitchen holding his duffel bag.

25 Q Was he going somewhere?

1 A Yeah.

2 Q Where was he going?

3 A Trick or treating.

4 Q And this is with the same person he talked to on

5 the phone?

6 A Yes.

7 Q Do you remember what time he left?

8 A Around 5:20.

9 Q So when you say you thought it was 5:00, it was

10 certainly sometime before Blaine left?

11 A Yes.

12 Q Was anyone else home at that time?

13 A Just my mom.

14 Q And -- and do -- do you know when -- the time

15 your mom got home?

16 A Around five.

17 Q Did you see her come home?

18 A No.

19 Q How do you know it was around five?

20 A Because, usually, she keeps her door shut for her

21 bed -- to her bedroom.

22 Q Okay. But how would you know, then, it was

23 around five when she got home?

24 A She usually comes home from work at that time.

25 Q There was no reason for you to -- well, strike

1 that. The, um -- so she normally comes home at
2 five?

3 A Yes.

4 Q Did you speak with her at all bef -- after -- or
5 while you were eating supper?

6 A No.

7 Q Okay. What did you do after you were done
8 eating?

9 A I went into my mom's room and talked to her about --
10 that she was -- I asked her -- or she told me that
11 she was going with Scott to the hospital to see his
12 mom.

13 Q And who's Scott?

14 A My mom's fiance.

15 Q Did you know ahead of time that that might be
16 something she was doing that evening?

17 A No.

18 Q Okay. Did you just learn -- this was the first
19 time you heard it?

20 A Yes.

21 Q Did you see her leave?

22 A Yes.

23 Q Do you know what time that was?

24 A Around 5:30.

25 Q And was it before or after Blaine left?

1 A After.

2 Q Was it shortly after or long time after Blaine

3 left?

4 A Shortly.

5 Q So is that why you think it was about 5:30?

6 A Yeah.

7 Q When, um -- when your mom left, did she -- did

8 you see if she drove off in her car?

9 A No.

10 Q Did you see how she left? How she left to go up

11 to Green Bay?

12 A Yeah.

13 Q And -- and how did that happen?

14 A She got into Scott's truck and they left.

15 Q So you saw Scott's truck out there?

16 A Yes.

17 Q Now, did you see Scott?

18 A No.

19 Q So you're assuming he was driving?

20 A Yeah.

21 Q Okay. During the time that you and Blaine had

22 been home after getting off the bus at 3:45, did

23 you ever leave the house?

24 A Can you repeat that?

25 Q After you and Blaine got off the bus at 3:45, and

1 before your mom left, excuse me, did you leave
2 the house?

3 A No.

4 Q Did you ever see Blaine leave the house?

5 A Just at 5 or around 5:20.

6 Q So when he left to go meet his friend was the
7 first time you saw him leave?

8 A Yes.

9 Q What did you do -- well, first of all, is anyone
10 left at the house, now, after your mom leaves?

11 A No.

12 Q Do you know where Bobby is?

13 A No.

14 Q Did you go in his room to check and see if he was
15 in there?

16 A No.

17 Q What did you do after your mom left at 5:30?

18 A Watched TV.

19 Q And where do you watch T -- do you watch TV in
20 your room?

21 A In the living room.

22 Q Do you know how long you watched TV?

23 A Until around 6:00 when I got a phone call.

24 Q Who -- who called?

25 A Mike Kornely.

1 Q Who's Mike Kornely?
2 A Blaine's boss.
3 Q Do you recognize his voice when he calls?
4 A Yes.
5 Q Do you know Mike?
6 A Yes.
7 Q Why -- how do you know Mike?
8 A I used to work for him.
9 Q Did he call for you?
10 A No.
11 Q Who did he call for?
12 A For Blaine.
13 Q Did you talk to him for very long?
14 A No.
15 Q And how long did you talk to Mike?
16 A Five to ten minutes.
17 Q Do you know for certain it was 6:00 or around
18 6:00 he called?
19 A Yeah.
20 Q And how do you know that for certain?
21 A Because he called after my mom left.
22 Q So sometime after 5:30 he called?
23 A Yes.
24 Q Okay. And you watched TV for awhile before he
25 called?

1 A Yes.

2 Q So, you're making a -- would it be fair to say
3 you're just kind of estimating what time he
4 called?

5 ATTORNEY FALLON: Objection, leading.

6 THE WITNESS: Yes.

7 ATTORNEY FALLON: At this point I'd ask
8 for a more question and answer format.

9 THE COURT: I think these are fair
10 questions. Go ahead.

11 Q (By Attorney Fremgen) Did you receive any other
12 calls after Mike Kornely called at around 6:00?

13 A No.

14 Q What did you do after you got off the phone with
15 Mike?

16 A I watched TV.

17 Q And how long did you watch TV after you got off
18 the phone with Mike?

19 A Until I got another phone call at around 7.

20 Q Okay. And who called you around 7?

21 A Steven.

22 Q Who's Steven?

23 A My uncle.

24 Q Is it -- that's Steven Avery?

25 A Yeah.

1 Q Okay. And the one who lives near -- next door?

2 A Yeah.

3 Q What did Steven call you about?

4 A He asked me if I wanted to come over to the bonfire.

5 Q Now, did you look out the window and see if there

6 was a bonfire?

7 A No.

8 Q What did you say to Steven?

9 A That I would be over in a little bit.

10 Q So what did you do? Did you have the phone then?

11 A Yeah.

12 Q What did you do then?

13 A I changed my clothes out of my school clothes.

14 Q Why did you get changed?

15 A Because, usually, I don't like, uh -- I wear

16 different clothes when I go out -- well, I was

17 wearing shorts and a short-sleeve that day.

18 Q What was the weather like that night?

19 A Cold.

20 Q So what did you change into?

21 A Pants and a -- a shirt.

22 Q What -- what kind of pants?

23 A Jeans.

24 Q Now, you've been, obviously, sitting through this

25 trial. There were a pair of jeans. I believe

1 it's Exhibit No. 58. Do you recall seeing that?

2 A Yes.

3 Q Those were the jeans you were wearing?

4 A Yes.

5 Q Okay. So did you go right over to your uncle's,

6 then, after you got off the phone?

7 A No.

8 Q What did you do?

9 A I changed into that clothes, and, then, he called

10 again ten -- about ten minutes later.

11 Q Why -- why did he call again?

12 A To see if I changed my mind.

13 Q What did you say?

14 A That I was on my way.

15 Q So what did you do next, Brendan?

16 A I walked over there.

17 Q Over where?

18 A Over by Steven.

19 Q Where, exactly, did you go over when you left

20 your house at around 7-ish?

21 A To the fire pit.

22 Q To a fire pit?

23 A Yeah.

24 Q Okay. Where's the fire pit located at Steven's

25 house?

1 A Behind his garage.

2 Q Did you see the fire going?

3 A Yes.

4 Q Could you describe what it looked like?

5 A It was two feet high.

6 Q Have you seen fires back there before?

7 A Yes.

8 Q How often have you seen fires? Do you know?

9 A Not that I recall.

10 Q More than once?

11 A Yes.

12 Q Okay. Did it look like it was normal size fire?

13 A Yes.

14 Q Did you see anything on the fire?

15 A Just some tires and some branches.

16 Q So about how close did you get to the fire?

17 A Ten, fifteen feet.

18 Q Where was Steven when you got to the fire?

19 A Standing, like, by the golf cart.

20 Q Okay. And where was the golf cart by the fire?

21 A About 15 feet away from it.

22 Q All right. What did you do when you got down to

23 the fire?

24 A I asked him what we were going to do, and he told me

25 that he wanted to pick up the yard, and we drove

1 around in the golf cart and picked up stuff.

2 Q Okay. What kind of stuff did you pick up?

3 A Wood, tires, an old cabinet and the van seat.

4 Q Now, is this stuff that's just lying around your

5 yard?

6 A Yes.

7 Q And -- and by -- I guess what -- to clarify, was

8 it your yard or Steven's yard?

9 A Both.

10 Q Now, we go back to the wood. Do you recall where

11 the wood was on your yard? Where it was?

12 A All over.

13 Q Why -- do -- do you know why there was wood all

14 over your yard?

15 A Because it was, uh, leftovers from building our

16 garage.

17 Q Leftovers from?

18 A Building our garage.

19 Q What -- what kind of wood?

20 A Timber. Whatever.

21 Q Timber? Would use to frame the garage you mean?

22 A Yeah.

23 Q Okay. You said an old cabinet?

24 A Yeah.

25 Q Where was that?

1 A Maybe a hundred feet away from the -- our garage.
2 Q And -- and some old tires you said?
3 A Yes.
4 Q Okay. Where were the tires when you -- when you
5 found them?
6 A In the same place as the cabinet.
7 Q So were most of these things on your land?
8 A Yes.
9 Q Okay. I'm sorry, did you mention a van seat,
10 too?
11 A Yes.
12 Q Okay. Where was that?
13 A On the side of our garage.
14 Q Do you know why it was there?
15 A Just that Steven got it for -- because we couldn't
16 find one of the seats for the van.
17 Q The van, meaning that maroon van, that was out in
18 front of your house?
19 A Yes.
20 Q Okay. What did you do with the items as you
21 collected them?
22 A We put them in the golf -- the back of the golf cart.
23 Q And what did you do with them after that?
24 A When the back of the golf cart got full, we drove it
25 to the fire.

1 Q Did you throw them on the fire?

2 A Some of it.

3 Q What did you do with the rest?

4 A Piled it -- or planted it -- piled it right by the

5 fire.

6 Q How many trips did you take in the golf cart

7 collecting debris from your yard?

8 A Around four.

9 Q And how long did it take you to do that? Collect

10 the debris in your yard?

11 A About 45 minutes.

12 Q And after that, what did you do?

13 A Went into the garage. He -- Steven asked me to help

14 him clean up something in the garage on the floor.

15 Q Okay. Now, have you been in the garage before?

16 A Yes.

17 Q Had you ever worked with Steven before in the

18 garage?

19 A Yes.

20 Q Was it unusual for him to ask you to help you

21 clean something out of the garage?

22 A Not really.

23 Q What did that, uh -- you said it -- something to

24 clean up. What did the -- what was the

25 something? Do you know?

1 A No.

2 Q What did it look like?

3 A Looked like some fluid from a car.

4 Q So what did you do to clean up? Or how did you

5 clean up the -- the mess on the floor?

6 A We used gas, paint thinner and bleach with, uh, old

7 clothes that me and my brothers don't fit in.

8 Q Okay. Well, let me ask you, was it a -- a large

9 spill?

10 A About three feet by three feet.

11 Q And did you pour gasoline on it?

12 A No.

13 Q So you were -- what -- what did you do? If you

14 weren't pouring the gasoline, what were you doing

15 to help clean up?

16 A I was looking through the bag to find stuff to clean

17 it up with.

18 Q Bag of what?

19 A Bag of the clothes.

20 Q And did you clean it up with the -- something

21 from the bag of old clothes?

22 A Yes.

23 Q Okay. And as you did that, what did you do with

24 the rags? Did you just wash them out?

25 A What do you mean?

1 Q When you cleaned up with the old clothes, what
2 did you do with them as they got dirty?
3 A We picked them up and we threw them on the fire.
4 Q Okay. Now, you said that you used three items to
5 try to clean up the -- the mess on the floor?
6 A Yes.
7 Q And did you ever pour anything on -- on the mess?
8 A No.
9 Q Okay. What was -- what was the second item that
10 Steven used?
11 A Paint thinner.
12 Q And did that clean up the mess?
13 A A little bit.
14 Q Same thing? You used rags, then, to clean up?
15 A Yes.
16 Q How would you -- how did you do that? Would --
17 did you get down on your hands and knees? Can
18 you explain how you did that?
19 A We would just throw it on the floor and we used our
20 feet.
21 Q And, then, you would do what with them?
22 A Move them around.
23 Q And, then, after they -- what did you do with
24 them after they were dirty?
25 A Picked them up and threw them on the fire.

1 Q And how did you pick them up?

2 A By our fingers.

3 Q The -- the bleach, that -- was that last?

4 A Yeah.

5 Q Where did Steven get the bleach?

6 A From the house.

7 Q Did you go in with him?

8 A No.

9 Q Did you ever go in the house that night?

10 A Not that I recall.

11 Q His house?

12 A No.

13 Q Do you know where Steven keeps his bleach?

14 A Usually in the bathroom.

15 Q And how do you know that?

16 A Because I was in the bathroom a few times and I seen

17 it.

18 Q Can you estimate, in the past, how many times

19 you'd been in the bathroom?

20 A Twenty to twenty-five.

21 Q So you're familiar with his house a little bit?

22 A Yes.

23 Q Did you ever ask Steven what it was that was on

24 the floor?

25 A No.

1 Q Now, do you recall -- or do you recall, at some
2 point, from February 27, or on, 2006, speaking to
3 Investigators Wiegert or Fassbender?
4 A Yes.
5 Q And -- and you recognize them; right?
6 A Yeah.
7 Q They're here in court?
8 A Yes.
9 Q Okay. And -- and you spoke to them a couple
10 times?
11 A Yes.
12 Q Did you tell them what you saw on the floor?
13 A Yes.
14 Q What did you tell them?
15 A That it could have been blood.
16 Q What did you tell them the first time they asked
17 you what it was on the floor?
18 A I can't remember.
19 Q How long did it take you to clean up what was on
20 the floor?
21 A Fifteen minutes.
22 Q Now, did anything happen to your clothes cleaning
23 up the -- the mess on the floor?
24 A Not that I noticed right away.
25 Q What did you notice later?

1 A That there was bleach stains on them.

2 Q Bleach on -- on what?

3 A The pants.

4 Q Okay. Did you ever wear those pants again?

5 A Not that I remember.

6 Q What did you do with them?

7 A I washed them that night and just put them in my

8 dresser.

9 Q So, after you finished cleaning up, you said it

10 took about 15 minutes?

11 A Yes.

12 Q What did you do then?

13 A We went back outside and we put some of the -- more

14 of the stuff that we picked up from the yard.

15 Q How close to the fire did you get when you were

16 throwing more stuff onto it?

17 A About five feet.

18 Q Did you, yourself, get any phone calls while you

19 were out there?

20 A Not that I talked to.

21 Q Did that -- so someone call you?

22 A My mom called Steven.

23 Q But you didn't talk to her?

24 A No.

25 Q Do you know what time that was?

1 A Not that I recall.

2 Q Did he tell you what she said to -- to him?

3 A Yeah.

4 Q Was Steven outside with you the whole time

5 watching the fire?

6 A Yes.

7 Q Other than going in to get the bleach, did he

8 ever go inside?

9 A No.

10 Q So, now, you're watching the fire for awhile;

11 right?

12 A Yes.

13 Q What are you doing?

14 A I only can recall that Steven was talking to me about

15 a phone call that he got from Jodi.

16 Q Okay. Do you recall any other conversations you

17 had?

18 A Not that I recall.

19 Q Did you -- but you were talking?

20 A Yes.

21 Q Do you know how long you were out there waiting

22 and -- or, excuse me, talking and watching the

23 fire?

24 A No.

25 Q About what time did you go home?

1 A Around ten.

2 Q Do you recall -- and, again, I -- maybe I asked

3 you this. I'm sorry. Did -- I asked you what

4 time you received the call from your mom?

5 A Yeah.

6 Q Did you know what time that was?

7 A No.

8 Q Okay. When you got home, was anyone else home?

9 A Not that I recall.

10 Q Did you see any brothers?

11 A No.

12 Q Did you talk to your mom at all?

13 A Yeah.

14 Q When was that?

15 A About 10:20.

16 Q Was she home then?

17 A No.

18 Q How did you talk to her?

19 A She called on the house phone.

20 Q What were you doing when she called?

21 A Sitting on the couch.

22 Q What time did you go to bed?

23 A After I had got done talking to my mom.

24 Q Now, following October 31, 2005, did you lose any

25 weight?

1 A Yes.

2 Q How much did you lose?

3 A Five, ten pounds.

4 Q Were you doing this on purpose? Is it --

5 A No.

6 Q You weren't trying to lose weight?

7 A Well, I was trying to.

8 Q Okay. Why were you trying to lose weight?

9 A Because people were calling me fat and because I

10 thought that my first girlfriend broke up me -- with

11 me because of my weight.

12 Q You mean first ever or --

13 A Yeah.

14 Q Prior to October, or -- well, let me ask -- ac --

15 actually, ask you it this way. Have you ever

16 seen Teresa Halbach before?

17 A No.

18 Q Now, you, obviously, know that name; correct?

19 A Yes.

20 Q When was the first time that you recall hearing

21 the name or seeing her picture?

22 A When she was reported missing.

23 Q When was that? Do you recall?

24 A Not that I remember.

25 Q And how did you come about hearing about her

1 being missing?

2 A On that day, my mom called. She told me to turn on

3 the news.

4 Q So you watched TV?

5 A Yes.

6 Q Now, at some point your Uncle Steven is arrested;

7 correct?

8 A Yes.

9 Q Did you watch any TV accounts about that?

10 A Not that I remember.

11 Q Did you ever see Teresa Halbach alive on

12 October 31, 2005?

13 A No.

14 Q Did you ever see her body that night?

15 A No.

16 Q Now, you spoke with Investigators Wiegert and

17 Investigator Fassbender; correct?

18 A Yes.

19 Q And you were in court for the video as well;

20 correct?

21 A Yes.

22 Q Obviously, that's you on the video; right?

23 A Yes.

24 Q Do you realize how serious this charge is?

25 A Yes.

1 Q Why did you tell those two investigators that you
2 participated in killing and -- and raping Teresa
3 Halbach?

4 A I don't know.

5 Q You have no idea why you would say that?

6 A No.

7 Q Okay. Brendan, I want to talk about that video a
8 little bit with you, okay?

9 A Okay.

10 Q You -- you know it was being videotaped that day?

11 A Yes.

12 Q And -- and the officers explained to you your
13 rights; is that right?

14 A Yes.

15 Q Did you understand them?

16 A Yes.

17 Q When they -- you first talked to the officers
18 about Teresa Halbach, did you immediately tell
19 them that you had -- you were there and
20 participated killing and raping her?

21 A No.

22 Q In your mind, Brendan, do you feel as if there
23 were promises made to you by the officers?

24 A Sort of.

25 Q What do you mean by that?

1 A That if I told the truth, that I won't go away for
2 life.

3 Q Did you tell the truth?

4 A No.

5 Q What other promises do you think -- in your mind,
6 what other promises were made to you?

7 A That's all I recall.

8 Q There were times that they wanted to talk to you
9 about a gun; right?

10 A Yes.

11 Q And did you ever admit to using the gun?

12 A No.

13 Q Why didn't you admit to that?

14 A Because I don't like guns.

15 Q Was that different than it -- when you admitted
16 to what you're saying you didn't do?

17 A Yes.

18 Q Why is that? Why do you believe that's
19 different?

20 A I don't know.

21 Q When you were being, um, questioned by the
22 officer, the two investigators, did they ever
23 tell you that they were telling you the truth
24 about things?

25 A Did I feel like that?

1 Q No. Did they? Did they tell you that?

2 A No.

3 Q Did they ever say they were lying about anything?

4 A Did they say I was lying?

5 Q No. Did they say they were lying to you?

6 A No.

7 Q You don't know what they were telling you was
8 true or not; correct?

9 ATTORNEY FALLON: Objection, leading, at
10 this point.

11 THE COURT: Under 906.11 (3), some leading
12 questions are permissible, mainly foundational
13 questions. We're now getting into some evidentiary
14 areas, so, I'm going to sustain the objection.

15 ATTORNEY FREMGEN: That's fine. I was
16 sense -- sense -- essentially using that to try to
17 lead up to this question, which will be a little
18 more open-ended.

19 Q (By Attorney Fremgen) If you didn't know that
20 they're lying to you, or telling you the truth,
21 Brendan, why did you answer the questions to them
22 the way you did?

23 A I don't know.

24 Q Do you have any explanation for admitting to
25 this?

1 A No.

2 Q How many times had you talked to the officers

3 before March 1?

4 A Twice.

5 Q And, when -- when did those two times occur?

6 A In November of 2005.

7 Q How many times in November?

8 A Twice.

9 Q Okay. What about -- anytime between November,

10 2005, and March 1, 2006?

11 A To March?

12 Q Between those two dates, did you talk to the

13 investigators? Officers -- Investigators Wiegert

14 or Fassbender?

15 A Yes.

16 Q And how many times did you talk to them between

17 those two dates?

18 A Once in February and -- or, there was three times, on

19 February 27, and one on February -- or March 1.

20 Q So where -- where were the three times in

21 February? Where did those occur?

22 A One at school, one in Two Rivers and one, I believe,

23 it was the Fire Department in Mishicot.

24 Q What happened after they spoke to you on

25 February 27? Did they arrest you?

1 A No.
2 Q What happened to you? Where did you go?
3 A They put us up in Fox Hills Resort.
4 Q Okay. How -- how -- how long were you up there?
5 A We only stayed up there for that night.
6 Q Which night? What's the date of that?
7 A February 7 -- 27.
8 Q So where did you go on February 28?
9 A Home.
10 Q Where did you sleep on February 28?
11 A At home.
12 Q Where did you go on March 1?
13 A Went to school.
14 Q And after that?
15 A The investigators talked to me and brought me to --
16 first they brought me to my house to get the pants,
17 and they brought me to Manitowoc.

18 ATTORNEY FREMGEN: I have nothing else,
19 Judge.

20 THE COURT: Cross.

21 ATTORNEY FALLON: Yes. Thank you.

22 **CROSS-EXAMINATION**

23 BY ATTORNEY FALLON:

24 Q Mr. Dassey, I have a few questions for you; all
25 right?

1 A Okay.

2 Q First, let me ask this: How long does it take
3 you to walk from the trailer, where you were
4 living with your mom and your brothers, to your
5 Uncle Steve Avery's trailer?

6 A Around a minute or two.

7 Q All right. You like to play video games; right?

8 A Yes.

9 Q As a matter of fact, when you get done with
10 school, you would like to design video games?

11 A Yes.

12 Q You really enjoy working with them?

13 A Yes.

14 Q And you're pretty good with them?

15 A Yes.

16 Q All right. And, at school, you have just two
17 special classes; right?

18 A I don't -- I don't know.

19 Q Well, you said you had both, um, mainstream and
20 some special classes?

21 A Yes, but I don't know the names of the --

22 Q How many special classes did you have? Two;
23 right?

24 A That I recall, yeah.

25 Q Okay. Otherwise, you're in with the rest of the

1 regular students; right?

2 A Yes.

3 Q Okay. Now, let me show you something. Exhibit

4 58. Do you recognize these?

5 A Yes.

6 Q All right. These are the blue jeans that you

7 were wearing on the night of October 31?

8 A Yes.

9 Q All right. And these are the ones that you've

10 just told your attorney that, on March 1, you

11 went with Special Agent Fassbender to pick these

12 up on your way to the Sheriff's Department?

13 A Yes.

14 Q Okay. These are the pants?

15 A Yes.

16 Q All right. You're telling us you washed them

17 that night?

18 A Yes.

19 Q Did you wash anything else that night?

20 A Not that I recall.

21 Q Just those pants?

22 A Yes.

23 Q All right. Now, you just told us that you were

24 cleaning up the floor in the garage?

25 A Yes.

1 Q But you didn't get on your hands and knees to
2 clean the floor?

3 A No.

4 Q Okay. In other words, you just put whatever
5 cleaner down and you used your feet to mop up the
6 stuff with the old clothes?

7 A Yes.

8 Q Is that right?

9 A Yes.

10 Q Okay. You're sure?

11 A Yes.

12 Q Okay. And you just told us that the pants didn't
13 seem to get dirty? You didn't notice them being
14 dirty?

15 A Yeah.

16 Q And you had just put them on before you went over
17 there?

18 A Yes.

19 Q Okay. Where did you get them from before -- when
20 you changed your clothes?

21 A In my dresser.

22 Q In your dresser drawer?

23 A Yes.

24 Q Were they clean, then, when you put them on?

25 A Yes.

1 Q All right. If they were clean when you put them
2 on, and you didn't notice them getting dirty, and
3 you never got on your hands and knees, why did
4 you wash them?

5 A Because I usually do that after a while.

6 Q You usually wash your pants after wearing them
7 for two hours?

8 A Well, I usually wash pants for school every day
9 almost.

10 Q You do laundry every night?

11 A Yes.

12 Q Mr. Dassey, you went over to your Uncle Steven's
13 house at some point after school?

14 A No.

15 Q You didn't tell your mother that you went over
16 there?

17 A I didn't.

18 Q All right. Well, let me, um, play something for
19 you, and I want to ask you a couple of questions;
20 all right?

21 A Okay.

22 (Wherein audio clip is played.)

23 Q That was the conversation between you and your
24 mother; right?

25 A Yes.

1 Q All right. Why didn't you tell your mother at
2 5:00 what you had seen earlier?
3 A Because it really didn't happen.
4 Q Was Teresa Halbach alive at 5:00, Mr. Dassey?
5 A She was never there at -- when I was there.
6 Q Never where, sir?
7 A I never seen her there.
8 Q You never saw her there?
9 A No.
10 Q All right. Then, why is your mother asking you
11 that question?
12 A I don't know.
13 Q Where do you think she would have gotten the idea
14 that you were there before 5:00, sir?
15 A I don't know.
16 Q She came home about 5:00?
17 A Yes.
18 Q So at 5:00, you're home, your brother, Blaine, is
19 still there, and you're there?
20 A Yes.
21 Q Your brother, Blaine, leaves at 5:15, 5:20?
22 A Yes.
23 Q Your mother leaves 5:20, 5:30?
24 A Yes.
25 Q And she leaves with Mr. Tadych?

1 A Yes.

2 Q All right. Mr. Dassey, let me ask you a
3 question: In the interview you gave on March 1
4 with these two gentlemen here, you told them that
5 your uncle's fiancée, Jodi Stachowski, called;
6 correct?

7 A Yes.

8 Q You told him that she called twice; correct?

9 A Yes.

10 Q All right. You told them that she called at
11 5:30?

12 A Yes.

13 Q How do you know that, if you weren't there?

14 A Because Steven told me.

15 Q He told you that?

16 A Yes.

17 Q What time did he tell you the other time?

18 A What do you mean?

19 Q I'm sorry?

20 A What do you mean?

21 Q How many times did she call that night?

22 A Twice.

23 Q How many times were you there?

24 A When I was there?

25 Q Yeah.

1 A Once.

2 Q I have something else I'd like you to listen to,
3 sir. I have something else for you, sir. One
4 moment.

5 (Wherein portion of March 1 videotape is played)

6 ATTORNEY FALLON: Record should reflect
7 that was about 14 minutes.

8 THE COURT: Do you have the start and
9 ending times?

10 ATTORNEY FALLON: Yes. Uh, 11:37, 47, to,
11 I believe it was about 11:50, approximately.

12 Q (By Attorney Fallon) All right. Mr. Dassey, you
13 told the officers that you were there and Teresa
14 was alive?

15 A Yes.

16 Q She was alive?

17 A But it really didn't happen.

18 Q You made that all up?

19 A Yes.

20 Q You just happened to know Teresa's words?

21 A No.

22 Q How do you know what she said?

23 A I made it up.

24 Q You made it up?

25 A Yes.

1 Q You made up the part that you raped her?
2 A Yes.
3 Q You made up the part that she told you not to do
4 it?
5 A Yes.
6 Q To do the right thing?
7 A Yes.
8 Q And to tell your uncle not to do it?
9 A Yes.
10 Q You made that up?
11 A Yes.
12 Q Now, Mr. Dassey, didn't you tell your mother in a
13 phone call on May 13 that you had gone over to
14 your Uncle Steven's after school and before she
15 came home?
16 A Yes.
17 Q You did?
18 A Yes.
19 Q And, again, on May 15, the first tape we played,
20 she's asking you why you didn't tell her. Why
21 didn't you?
22 A Because it didn't happen.
23 Q Why did you tell her you went over there, sir?
24 A I don't know.
25 Q You lied to your mother as well?

1 A Yes.

2 Q And you lied to the police?

3 A Yes.

4 Q Are you lying -- you're lying today?

5 A No.

6 Q Didn't you tell your mother, when she asked you,
7 when did you go over there, well, I went over
8 earlier and then came home before you did.

9 A Yeah.

10 Q You told her that; right?

11 A Yeah.

12 Q All right. And she said, why didn't you say
13 something to me then; right?

14 A Yeah.

15 Q And you answered, I don't know, I was too scared.

16 A Yeah.

17 Q You didn't tell your mother you weren't there,
18 did you?

19 A Because I never went up -- out -- over there.

20 Q My question, young man, is you didn't tell your
21 mother you weren't there; right?

22 A No.

23 Q That's not right?

24 A I didn't tell her.

25 Q You did not. Why?

1 A Because I -- I didn't go over there.

2 Q Why did you let her believe that you did?

3 A I don't know.

4 Q Now, speaking of these -- these lies, Mr. Dassey,
5 on your direct examination, you told us that
6 there was a fire that night; right?

7 A Yes.

8 Q But when you were interviewed up in Crivitz by
9 Detective O'Neill, you remember the gentleman who
10 testified a couple of days ago?

11 A Yes.

12 Q All right. You told him there was no fire that
13 week; right?

14 A Yes.

15 Q So you lied to him?

16 A Yes.

17 Q Why did you lie to him?

18 A Because I'm just like my family. I don't like cops.

19 Q You don't like cops. Why didn't you tell
20 Detective O'Neill what you told us on direct
21 examination today?

22 A I don't know.

23 Q You didn't -- if you didn't do anything wrong,
24 sir, why didn't you tell Detective O'Neill?

25 A I don't know.

1 Q Your brother's interview was done much more
2 quickly than yours; right?

3 A Yeah.

4 Q On November 6?

5 A Yes.

6 Q In fact, he was done in about 10 minutes, maybe,
7 15, maybe?

8 A I believe so.

9 Q All right. Now, in that second interview -- you
10 just told us you were interviewed twice up in
11 Crivitz area. On the second interview, you did
12 tell them about a fire.

13 A Yes.

14 Q When did you tell them the fire happened that
15 time?

16 A On October 31.

17 Q Isn't it a fact you told them that the fire was
18 Tuesday or Wednesday of that week and not Monday?

19 A I might have.

20 Q I want to play one very brief clip from this
21 March 1 interview, sir. I'd like you to watch it
22 and then answer a question or two; all right?

23 A Yes.

24 (Wherein portion of March 1 videotape is played)

25 ATTORNEY FALLON: For the record, I started

1 at 2:10:25, uh, 2.

2 Q (By Attorney Fallon) Mr. Dassey, if you didn't

3 do anything, why did you feel sad?

4 A I don't know.

5 Q Why did you apologize?

6 A I don't know.

7 Q They didn't tell you to apologize?

8 A No.

9 Q You apologized on your own; right?

10 A Yes.

11 Q Do you always apologize for things that you

12 didn't do?

13 A Not really.

14 Q In fact, you usually apologize when you've done

15 something wrong?

16 A Not really.

17 Q You don't apologize then either?

18 A Sometimes.

19 Q Okay. When do you apologize?

20 A For both.

21 Q For both? Explain, please.

22 A I would say that I'm sorry for, uh, some things I do

23 and some I don't.

24 Q Is that why you apologize in this case? Because

25 you were sorry for what you had done to Teresa?

1 A No, because I didn't do it.

2 Q Why did you apologize?

3 A I don't know.

4 Q Now, all week you sat in court with your head
5 down and you didn't look at the tape of the
6 interview when we played it on Friday. Why?

7 A Huh?

8 Q Why did you not look at the tape?

9 A Because I didn't have to.

10 Q In fact, you didn't look at the tape this morning
11 when I played it for the fifth -- for almost 15
12 minutes, did you?

13 A No.

14 Q You didn't have to; right?

15 A No.

16 Q That's because you knew what was on it?

17 A Yes.

18 Q Yeah. Are you ashamed of your behavior? Is that
19 why your head was down all week?

20 A No.

21 Q Are you feeling guilty?

22 A No.

23 Q Then why were you hanging your head all week?

24 A I had my head down because I can hear better that
25 way.

1 Q Are you hearing me all right now?

2 A Yes.

3 Q You've heard Detective Wiegert testify on --

4 A Yes.

5 Q -- Friday and Saturday morning; right?

6 A Yes.

7 Q And he said he had no idea that there was a

8 sexual assault?

9 A Yes.

10 Q You were the one who brought up the fact of a

11 sexual assault; right?

12 A Yes.

13 Q You brought up the rape; right?

14 A Yes.

15 Q You went over to your uncle's cabin because you

16 knew you were going to have sex; right?

17 A No.

18 Q Why did you tell the police that your Uncle

19 Steven was proud of you for what you had done?

20 A I don't know.

21 Q Why did you say that you sexually assaulted her?

22 A I don't know.

23 Q Why did you say you put your penis in her for

24 five minutes?

25 A I don't know.

1 Q Why did you tell the police that you thought it
2 was blood in the garage?
3 A Because it was the color of red.
4 Q Because it was the color of red?
5 A Yeah.
6 Q It looked like blood?
7 A It could have been.
8 Q What else would it have been?
9 A Fluid from a car.
10 Q Mr. Dassey, have you ever used bleach to clean up
11 car fluid?
12 A That was the first time I cleaned up car fluid.
13 Q First time?
14 A Yes.
15 Q All right. And you used gas?
16 A Yes.
17 Q Used paint thinner?
18 A Yes.
19 Q And you used bleach?
20 A Yes.
21 Q You used the bleach?
22 A Well, Steven put it on the ground.
23 Q How did the bleach get on your pants if you never
24 got on the ground, sir?
25 A It could have splashed up on my pants.

1 Q All the way up to your waist?

2 A That, or I could have had some -- the sprinkles on

3 the bottom could have been from splashing on the

4 ground, and when I picked up the -- the towel -- the

5 rags that we used, I could have wiped my hands on my

6 pants.

7 Q Those rags were Teresa's clothing; right?

8 A No.

9 Q Why did you tell the officers her clothing were

10 in the fire?

11 A I don't know.

12 Q All right. I want to show you a picture. I'm

13 showing you what is marked for identification, or

14 received into evidence, excuse me, as Exhibit

15 204. You recognize the people in that picture?

16 A Yes.

17 Q That's your Uncle Steve on the right?

18 A Yes.

19 Q And your grandma and your grandpa in the middle?

20 A Yes.

21 Q And that's you on the left?

22 A Yes.

23 Q And that's at the cabin in Crivitz?

24 A Yes.

25 Q As a matter of fact, that's the search warrant on

1 the table; right?

2 A I couldn't -- can't tell.

3 Q Do you remember that picture being taken?

4 A Yes.

5 Q And it was taken right around the same time you

6 were interviewed by Detective O'Neill; right?

7 A I can't recall.

8 Q Well, you just said you remember when the picture

9 was taken. When was it taken?

10 A In November something.

11 Q In November?

12 A Yes.

13 Q While you were up at Crivitz?

14 A Yes.

15 Q And before your Uncle Steven was arrested?

16 A Yes.

17 Q So it would have been taken between November 5

18 and, say, November 9?

19 A Yes.

20 Q What were you talking about in that -- right

21 around the time of that picture?

22 A I can't remember.

23 Q All right. Is your Uncle Steven proud of you?

24 Does he have that proud look in his face?

25 A No.

1 Q What are you thinking in that picture? Do you
2 remember?

3 A No.

4 Q Why did you tell the police that your Uncle
5 Steven was proud of you for helping him?

6 A I don't know.

7 Q Why did you tell them he couldn't have done it
8 without you on that March 1 interview?

9 A I don't know.

10 Q Well, he was proud of you for helping him, wasn't
11 he?

12 A No.

13 Q He was not?

14 A Because it didn't happen.

15 Q I'm sorry? What didn't happen?

16 A All the stuff that I said.

17 Q Well, did you clean up?

18 A Yeah.

19 Q All right. You helped put things on the fire?

20 A Yes.

21 Q All right. As a matter of fact, you saw this car
22 seat; right?

23 A Yes.

24 Q It's sitting right in front of you; right?

25 A Yes.

1 Q You helped your uncle put that car seat on the
2 fire?
3 A Yes.
4 Q And you helped him put tires on the fire?
5 A Yes.
6 Q So that part's true?
7 A Yes.
8 Q And he told you, when he was done, thanks for
9 helping. I'm proud of you. I couldn't have done
10 it without you.
11 A Not that I remember.
12 Q Well, let's talk about your memory. How is it
13 that you were able to tell the police officers,
14 Mr. Fassbender and Mr. Wiegert, so much detail
15 about what happened to Teresa if you weren't
16 there?
17 A I don't know.
18 Q What do you mean, sir, you don't know?
19 A I could have got it out of books.
20 Q Out of books?
21 A Yeah.
22 Q Tell us, what books could you have gotten that
23 out of?
24 A I don't remember the names.
25 Q Where else could you have gotten it?

1 A I don't know.

2 Q All right. Out of books. Let's talk about that

3 then. Would you say you have a good memory,

4 Mr. Dassey, or a medium one, or a poor one?

5 A Between poor and medium.

6 Q All right. And would you agree with the

7 counselor, Ms., um -- Ms. Gross,

8 Schoenenberger-Gross, when she testified on, uh,

9 Saturday morning that you do have memory problems

10 when it comes to learning stuff at school?

11 A Yes.

12 Q As a matter of fact, when you read things, or

13 when teachers tell you things, it's hard for you

14 to remember that so you do well on your tests;

15 right?

16 A Yes.

17 Q All right. But for other things, things that you

18 personally experience, things that you see and

19 feel and hear and smell yourself, your memory is

20 better for those things; right?

21 A Somewhat.

22 Q And -- and that's because you actually live

23 through them, you experience them; right?

24 A Yeah.

25 Q Well, when was it that you read these books to

1 help you provide all that detail to these
2 officers?

3 A Probably three, four years ago.

4 Q I'm sorry?

5 A Three or four years ago?

6 Q Three or four years ago? And you just happened
7 to remember all of that on March 1, 2006?

8 A Yes.

9 Q And you just happened to be able to tell them the
10 exact travels that your Uncle Steve took in
11 driving Teresa Halbach's SUV from his garage to
12 the place in the salvage yard where the vehicle
13 was hidden?

14 A Yes.

15 Q What book had that story in it, Mr. Dassey?

16 A I don't know.

17 Q What book that you read ever had the story of a
18 woman chained to a bed, raped by two -- raped,
19 stabbed, and then her body thrown on a fire?
20 What book was that, sir?

21 A I believe it was called, *Kiss the Girls*.

22 Q All right. Who wrote the book?

23 A I don't remember his name.

24 Q Mr. Dassey, please look at Exhibit 208?

25 A Yeah.

1 Q You drew that; correct?

2 A Yes.

3 Q That's your depiction?

4 A Yes.

5 Q Of Teresa Halbach chained to the bed?

6 A I don't understand.

7 Q Is that your dep -- is that your description? Is

8 that how she looked when you saw her on the bed

9 in Uncle Steven's bedroom?

10 A I didn't see it.

11 Q You just made that up?

12 A As I said, I got it out of that book.

13 Q Yeah. The bed is a bed that you could see from

14 the living room? You could see down the hallway

15 and see into that bedroom?

16 A Yes.

17 Q Exhibit 210. You drew this as well, sir;

18 correct?

19 A Yes.

20 Q That is your description of the burn area?

21 A Yes.

22 Q That is your description of Teresa on the fire in

23 the burn pit?

24 A Yes.

25 Q You made that up?

1 A Yes.

2 Q Why?

3 A I don't know.

4 Q Did you make Exhibit 208 up?

5 A Yes.

6 Q Why?

7 A I don't know.

8 Q Exhibit 209. You drew this picture of the

9 garage; correct?

10 A Yes.

11 Q This is your picture of Teresa Halbach; right?

12 A Yes.

13 Q And that's the area right here where you cleaned

14 up; right?

15 A No.

16 Q Well, you said that you cleaned up a -- a three

17 foot by three foot stain in the garage on direct

18 examination; right?

19 A It was in the garage but not right there.

20 Q You told the police it was right behind the lawn

21 mower?

22 A Yes.

23 Q And that's where you cleaned up?

24 A No.

25 Q Why did you tell the police this was the area of

1 the cleanup?

2 A I don't know.

3 Q Why did you put Teresa Halbach's representation,
4 this stick person, why did you tell them that was
5 Teresa's body?

6 A I don't know.

7 Q Exhibit 207. You drew this picture of the knife?

8 A Yes.

9 Q You said this was the knife that your Uncle
10 Steven used to stab Teresa Halbach?

11 A Yes.

12 Q You drew that?

13 A Yes.

14 Q And you describe it as having a black handle?

15 A Yes.

16 Q And you told the police this was the knife that
17 you used to cut across the front of her throat?

18 A Yes.

19 Q Why?

20 A I don't know.

21 Q Mr. Dassey, why did you tell the police that the
22 burn pile smelled bad?

23 A I don't know.

24 Q It smelled bad because there was a body there;
25 right?

1 A No.

2 Q You saw body parts in that fire, didn't you?

3 A No.

4 Q You told the officers that on February 27 you saw

5 body parts?

6 A Yes.

7 Q You told your cousin, Kayla, you saw body parts

8 in December?

9 A No.

10 Q No? She just made that up?

11 A Yes.

12 Q Okay. Did you ever talk to Kayla about the

13 events? The things that happened on October 31?

14 A I might have talked about Steven to her, but not what

15 happened on that day.

16 Q What would you think you would have told her

17 about Steven?

18 A I don't remember what I told her.

19 Q Did you tell her anything about body parts or --

20 or any of the information that you told, uh,

21 Investigators, uh, Fassbender and Wiegert?

22 A No.

23 Q Okay. You're sure?

24 A Yes.

25 Q Absolutely sure?

1 A Yes.

2 Q Okay. Then tell us, how is it that you and

3 Kayla, both, came up with telling and seeing body

4 parts in the fire if you never talked about it?

5 A She could have heard it on the news.

6 Q What newscast would that have been, sir?

7 A I don't know.

8 Q Your seeing body parts in the fire? What

9 newscast was that?

10 A I don't know. When I heard that they found bones.

11 Q No. My question is, you told the police on

12 February 27 you saw body parts; right?

13 A Yes.

14 Q All right. Kayla is telling her counselors of a

15 conversation she had with you. She's telling her

16 counselors in January that she talked to you in

17 December and that you had told her about body

18 parts. How could that be?

19 A I don't know.

20 Q How do you feel about this today? Right now.

21 A That I just want to go home.

22 Q That's all you feel right now? You just want to

23 go home?

24 A And scared.

25 Q Do you feel sorry for Teresa?

1 A Well, I know everybody feels sorry for losing
2 someone.
3 Q What do you feel?
4 A I feel sorry for them.
5 Q Why? Why?
6 A Because I know how it feels to lose someone that you
7 love.
8 Q And you're telling us today that you had nothing
9 to do with the -- with the death of Teresa
10 Halbach?
11 A No.
12 Q Why did you tell the officers that you did?
13 A I don't know.
14 Q And is it just a coincidence that you had all the
15 details about how she died?
16 A I don't know.
17 Q Do you recognize this exhibit; 170?
18 A Yes.
19 Q This is the rake that your Uncle Steven used to
20 tend the fire that night, isn't it?
21 A I can't remember.
22 Q You can't remember?
23 A No.
24 Q How about this shovel? Exhibit, uh, 171?
25 A Yes.

1 Q He used this shovel that night; right?

2 A Well, I know he used a shovel and a rake, but I don't
3 know that they're it.

4 Q How did you know that Teresa was handcuffed to
5 the bed?

6 A I don't know.

7 Q You just made that up?

8 A Yes.

9 Q You've never told a lie before that got you into
10 so much trouble, have you?

11 A No.

12 ATTORNEY FALLON: That's all.

13 THE COURT: Redirect?

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY FREMGEN:

16 Q Brendan, you had been asked by Attorney Fallon
17 about the jeans. And, specifically, asked about
18 how bleach got on them; correct?

19 A Yes.

20 Q You said you might have wiped your hands on them?

21 A Yeah.

22 Q Do you recall wiping your hands on them?

23 A I think I did.

24 Q When did you notice that they were dirty with
25 bleach?

1 A When I got home.

2 Q That same night?

3 A Yes.

4 Q Mr. Fallon played a -- played a portion of the
5 video for you to watch and asked you some
6 questions. Do you recall that?

7 A Yes.

8 Q And he questioned you about how you had answered
9 the questions to the two officers; correct?

10 A Yes.

11 Q Had you said the same thing before that to the
12 officers?

13 ATTORNEY FALLON: Objection, vague.

14 ATTORNEY FREMGEN: That's fine.

15 Q (By Attorney Fremgen) What did you say to the
16 officers prior to -- about those same topics
17 prior to that clip that he just showed you?

18 A I don't understand.

19 Q Okay. Attorney Fallon showed you a clip of you
20 telling the officers about being there and seeing
21 Teresa Halbach and participating and killing her
22 and sexually assaulting her; correct?

23 A Yes.

24 Q You watched that or saw it or heard it?

25 A Yes.

1 Q Were you asked those same questions at any other
2 time during that interview?

3 A During that interview?

4 Q During interviews with the officers?

5 A Before the taping?

6 Q Were you asked any questions like that before
7 that clip on the video?

8 A Yes.

9 Q Were your answers the same?

10 A No.

11 Q Why did you have different answers before that?

12 A Because I was making it up.

13 Q What were you making up?

14 A The details and that.

15 Q Before or during the clip that Mr. Fallon showed,
16 what was the part that you made up?

17 A Well, the stuff that didn't really happen is the
18 stuff that I made up.

19 Q And what stuff didn't really happen?

20 A Where I was over there before 5:00, where helped, and
21 kill her, and rape her and that.

22 Q Why should this jury believe you today?

23 A Because I didn't really do it.

24 Q On the video clip -- again, I'm talking about the
25 one Mr. Fallon showed you?

1 A Yes.

2 Q The longer one?

3 A Yeah.

4 Q It's about 15 minutes long? You heard the
5 questions that were asked of you by the officers?

6 A Yes.

7 Q When the officer would tell you that it wasn't
8 your fault, how did that make you feel when
9 you're answering the questions?

10 ATTORNEY FALLON: Objection, beyond the
11 scope.

12 ATTORNEY FREMGEN: It was on the video.

13 THE COURT: It was. Uh, overruled. You
14 may answer.

15 THE WITNESS: Can you repeat the
16 question?

17 Q (By Attorney Fremgen) When the officers would
18 tell you, this is not your fault, how did that
19 question or how did that comment in the question
20 make you feel?

21 A That I wouldn't be -- that I wouldn't be taken away
22 from my family and put in jail.

23 Q No matter what you said?

24 A Yeah.

25 ATTORNEY FREMGEN: I have nothing else,

1 Judge.

2 THE COURT: Any recross?

3 ATTORNEY FALLON: No. Thank you.

4 THE COURT: All right. You may step down.
5 We'll take a break. About, uh -- until about
6 quarter to.

7 (Recess had at 10:24 a.m.)

8 (Reconvened at 10:56 a.m. Jury in.)

9 THE COURT: At this stage, ladies and
10 gentlemen, uh, this is part of the defense's case.
11 The defense has subpoenaed a witness, but the
12 witness is not going to be available until 1:30 this
13 afternoon; is that correct?

14 ATTORNEY FREMGEN: He's apparently
15 leaving the crime lab shortly. Should be here by
16 1:30.

17 THE COURT: Uh, you're finding out that
18 scheduling witnesses is certainly not a science in
19 the case, and I'm not even sure it's an art, but
20 in -- in any event, that's what's -- that's what
21 occurred, or that's what's occurring at this stage.
22 And he will be your only witness this afternoon?

23 ATTORNEY FREMGEN: This afternoon. The
24 next witness we have would take about, we're
25 guessing, somewhere between five, five-and-a-half

1 hours.

2 THE COURT: Tomorrow.

3 ATTORNEY FREMGEN: We'll begin first thing
4 Mon -- uh, tomorrow morning, correct.

5 THE COURT: All right. So with that said,
6 uh, we're going to adjourn until 1:30 this
7 afternoon. Thank you.

8 (Recess had at 10:58 a.m.)

9 (Reconvened at 1:44 p.m. Jury in)

10 THE COURT: Mr. Fremgen.

11 ATTORNEY FREMGEN: Judge, at this time we
12 would call Mike Riddle.

13 THE COURT: Right up here, sir. Just
14 remain standing.

15 THE CLERK: Please raise your right hand.

16 **MICHAEL RIDDLE,**

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: Michael Riddle, R-i-d-d-l-e.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q Mr. Riddle, what is your current employer?

25 A I'm a latent print examiner with the State Crime Lab

1 in Madison.

2 Q Why don't you pull the microphone just a little
3 bit closer to you. And how long have you been
4 working in that capacity?

5 A Uh, be 15 years in August.

6 Q What, uh, generally, are your duties and
7 responsibilities as a -- a fingerprint analyst
8 for the crime lab?

9 A We receive evidence from, uh, local sheriff and
10 police departments to process for presence of latent
11 finger or palm prints. If we do get prints on an
12 item and they're compared to standard fingerprint or
13 palm-print cards in attempt to make an
14 identification.

15 Q You've testified as an expert in fingerprint
16 analysis in prior cases in the state of
17 Wisconsin?

18 A Yes, I have.

19 ATTORNEY FREMGEN: I believe at this
20 time, Judge, the State has no objection to
21 qualifying this individual as an expert in this
22 field.

23 THE COURT: Is that correct?

24 ATTORNEY GAHN: That's correct, Your
25 Honor.

1 THE COURT: All right. It's stipulated
2 then.

3 ATTORNEY FREMGEN: We'll avoid a number of
4 other questions that way.

5 Q (By Attorney Fremgen) I see you have a file with
6 you. Is that the file in regards to this
7 investigation?

8 A Yes, it is.

9 Q If you need to refer to that while you're
10 testifying, if you can just indicate that you
11 need do to do so before you do.

12 A Okay. Thanks.

13 Q Thank you. Can you, uh, briefly explain why
14 analyzing fingerprints is an important
15 investigative tool?

16 A Because of the uniqueness and individualness of
17 fingers, uh, no two fingerprints on -- are alike on
18 any person or persons, so if we are able to find a
19 latent print on an item, it does indicate that that
20 item was touched at some point in time by that
21 particular individual, uh, to the exclusion of all
22 others.

23 Q Is this an exact science?

24 A Yes, it is.

25 Q Can you, uh, uh, briefly describe what it is that

1 you're looking for, as a fingerprint analys --
2 when you're doing a fingerprint analysis, in
3 regards to, say, comparing a known fingerprint to
4 an unknown fingerprint?

5 A Well, the first thing I do is if you can see a
6 pattern type. There's only three basic patterns on
7 fingerprints, and it's a whorl, or a loop, uh, or an
8 arch. Um, looking at the standard, if I see that a
9 person has all loops, which is fairly common, and the
10 latent fingerprint I have is -- is a whorl, then I
11 don't have to look any further. I can automatically
12 exclude that print.

13 Uh, if I do get two pattern types that
14 are the same, then I look for individual
15 characteristics within that pattern area in order
16 to make an identification.

17 Q What ways do you, as -- or as, let's say, a crime
18 tech individual, who may be lifting prints and --
19 and you can describe what that means, but what
20 ways, uh, are there available to you, or those
21 persons, um, extracting or developing a
22 fingerprint for purposes of comparison, can you
23 describe the ways that you go about to do that?

24 A There's several different ways, and usually it
25 depends upon the nature of the surface as to what

1 method of development we use to bring out a
2 fingerprint.

3 A -- a latent print is also called a
4 hidden print, which means it's invisible and has
5 to be brought out or developed by the use of
6 powders or chemicals.

7 If we have a real nice, smooth surface,
8 um, such as a piece of glass, then we can just
9 use regular fingerprint powders, develop the
10 print that way, and we can photograph it, and
11 preserve it. Um, and we either do or do not lift
12 it. It depends. Uh, if we have -- have it
13 captured with a photograph, there really isn't
14 any nec -- isn't necessary to go any farther.

15 Um, but, many times, we'll put some
16 lifting tape, which is like a clear, plastic
17 tape, and we'll rub it on top of the print, pick
18 it up, and put it on a backer.

19 If we're using -- if we're using a white
20 powder, we'll -- can put it on a black backer so
21 that we can see the contrast, and if we're using
22 a -- a darker powder, then we'll put it on a
23 white or a clear backer so we can see it.

24 Um, other items that are more porous,
25 such as paper, cardboard, uh, we have to use

1 chemicals in order to develop those prints. Uh,
2 there's one particular chemical we use called
3 Ninhydrin, and it reacts to the amino acids in
4 the fingerprints. So when we, uh, processed
5 that, either brush it on, or spray it on, um,
6 it'll develop into kind of a purple fingerprint.
7 Brings out all the ridge detail.

8 Uh, there's also Superglue, which we use
9 on semi-porous items. Put it in a tank where
10 there's superglue fumes, and the fumes will
11 adhere to the fatty acids in the fingerprint.

12 Uh, after that's accomplished, we can
13 either powder it and lift it, or we can enhance
14 it further by the use of dye stains and look at
15 it under a laser.

16 Q Now, you were referring to latent prints --

17 A Yes --

18 Q -- for the most part?

19 A -- that's correct.

20 Q There are other types of prints; correct? For
21 instance, visible prints?

22 A There's visible prints, known as, uh, pat -- patent
23 prints, and there's also ink impressions, uh, we get
24 from our fingerprint standards, like on a fingerprint
25 card.

1 Q What are plastic prints? Have you heard that
2 term before?

3 A Uh, yes. It's either a plastic or a molded
4 impression, and these are impressions that might be
5 left in clay, putty. Um, oftentimes if a burglar
6 tries to get in through a window that's puttied, we
7 can find molded prints inside there.

8 Q If someone leaves a print in dust, for instance,
9 what would -- would that be able to be, um,
10 lifted under some of the -- what you discussed in
11 regards to latent prints, or is that more
12 appropriate to be somehow preserved as like a
13 plastic print?

14 A Well, in -- in a dust print, um, we don't get a whole
15 lot of those, because what normally happens, if a
16 surface is real dusty and the hand or fingers touches
17 that dusty item, it lifts the -- it lifts the dust
18 away, and it may leave an impression looking like a
19 finger was there, but there usually is no ridge
20 detail, uh, at all. So there's not much we can do
21 with it. We can try supergluing it and see if we can
22 develop ridge detail, but on dusty surfaces, it -- it
23 usually doesn't work very well.

24 Q Is it possible to use digital photograph of a
25 print, whether it be visible or plastic, for

1 instance, to be able to preserve the print
2 without, actually, physically touching the print?

3 A Yes, it's possible. Um, we -- we use standard three
4 by five format film, uh, not -- not digital, to
5 capture our prints. Although, we do get many prints
6 in from other agencies that they've used digital
7 camera to take them.

8 Q For instance, the FBI, I think, has developed a
9 methodology, and -- for that tech -- technology
10 for, uh, extracting prints using digital
11 photographs; is that correct?

12 A That's correct.

13 Q Now, in -- in this case, uh, you -- you were
14 called in at some point to assist in the
15 investigation? The Halbach case?

16 A Yes, I was.

17 Q And you were -- you'd have -- well, how would it
18 occur? Did -- did the, uh, lead investigators
19 contact you and ask you to look at items that may
20 have either visible or latent prints?

21 A Well, when the vehicle was located and -- and brought
22 (sic) to the lab, that's where I started my
23 involvement in it. And, uh, we don't get a lot of
24 vehicles in there, but when we do get them in the
25 identification section, we'd sort of rotate, uh, and

1 I was -- happened to be up at that time. That's how
2 I got that vehicle.

3 Q One second. You mentioned the vehicle. Is this
4 the vehicle you're referring to?

5 A Yes, it is.

6 Q And when you -- you -- You, uh, for instance,
7 examined the vehicle for possible prints; is that
8 correct?

9 A That's correct.

10 Q Did you view the -- the vehicle once it was at
11 the crime lab, or did you, actually, physically
12 come to the crime scene to -- to view the -- uh,
13 the vehicle where it was found?

14 A All my work was done strictly at the crime lab.

15 Q So you weren't a field -- you weren't involved in
16 the field operations of this investigation?

17 A No, I was not.

18 Q So, now, at the crime lab, you observed this
19 vehicle. Did you observe any visible prints when
20 you, uh, examined the vehicle?

21 A Yes, I did.

22 Q And were you able to, um, somehow preserve those
23 prints?

24 A Uh, the prints were powdered and developed that way,
25 and then they were photographed. Um, after the -- I

1 looked at the photographs and determined that they
2 were of value for identification, then I attempted to
3 lift them. Um, however, the -- for some reason or
4 another, they did not lift real well off the vehicle.

5 Q But you did first photograph the print before
6 attempting the lift?

7 A That's correct.

8 Q Okay. So you were able to also make -- do your
9 own observation of the photograph and compare to,
10 let's say, for instance, a known sample?

11 A That's correct.

12 Q In this case, do you recall what items of the
13 Rav 4 that you, um, examined and were able to
14 eith -- either photograph or actually lift a
15 possible print from?

16 A Yes. The outside of the vehicle, all those prints
17 that I found there were mostly -- ma -- majority of
18 them were on the rear or the side of the vehicle.
19 Uh, those were all powdered and then photographed,
20 preserved in that way. Um, there was other items
21 inside the car. A water bottle. I've got a list if
22 you want me to read off the list.

23 Q If -- if you recall?

24 A I don't recall all the items on there, but they --
25 they were -- they were processed inside the lab a

1 little bit differently. The vehicle on the outside
2 was processed in the garage. Uh, obviously, I can't
3 take that into my lab area. But the vehicles that I
4 took out -- excuse me -- the, um, items that I took
5 out from the inside of the vehicle were, uh, taken
6 back into the lab area and placed in a fuming tank,
7 uh, where they were superglued and then powdered.

8 Um, I don't know if I -- I don't think I
9 had any of those photographed, though, because
10 they were -- I just lifted them.

11 Q When you, uh, examined the exterior of the
12 vehicle, in doing so, did you look at what would
13 be considered obvious points of potential entry
14 that might leave a visible or latent print?

15 A Well, obviously, we look at -- at door handles,
16 and -- and areases (phonetic) like that to see if we
17 can develop prints. I didn't see any visible in
18 those areas except for on the back door. Uh, course
19 the whole vehicle, itself, was powdered, because not
20 all the prints would be visigle (phonetic) visible to
21 the naked eye.

22 Um, the -- the ones that were visible
23 appeared like they had been left in some type of
24 a substance, whether it'd been grease or
25 something, because I think that's the reason they

1 wouldn't lift. It'd actually dried on the
2 vehicle and I couldn't -- I couldn't lift
3 anything off of it.

4 Q Before I leave this exhibit, specifically, on the
5 back of the Rav 4, you can't see very clearly in
6 this picture, but do you recall there's a spare
7 tire or some sort of tire on the back end?

8 A That's correct, there was.

9 Q And there's a cover -- some sort of cover on
10 that?

11 A That's correct.

12 Q Did you note any -- what appeared to be a swipe
13 mark or some sort of a hand, palm print type of
14 marking?

15 A It actually appeared to be a whole handprint, um, on
16 the tire cover, itself. The problem with that is,
17 like I was saying before, this was really dirty, the
18 back of the tire cover was, and -- and rather than
19 actually leaving ridge detail behind, that's actually
20 a blank spot where they lifted the dirt up off of --
21 where it probably adhered to their fingers when they
22 removed their hands.

23 Uh, I did take the cover off and fume it
24 in -- in attempt to get other prints off of it,
25 but nothing developed. As I said, it was very

1 dirty and dirt is not a good medium for
2 fingerprints.

3 Q So you attempted to, actually, lift a print off
4 of it. Unable to do so?

5 A I -- I didn't attempt to lift in -- in using lifting
6 tape. I -- I attempted to develop one. Um, there
7 was nothing to develop, so there was nothing to lift.

8 Q From the photograph you took of that, you
9 didn't -- I'm sorry. You did take a photograph
10 as well?

11 A Uh, they -- photographs were actually taken by Brian
12 Werner (phonetic) who is our forensic photographer at
13 the lab. But, yes, I had him photograph it first.

14 Q And you had an opportunity to review the
15 photograph, too?

16 A Yes, I did.

17 Q Were you able to find any sort of ridge
18 formations? Were you able to provide any sort of
19 a -- a comparison from?

20 A There was no ridge detail on back of that tire cover
21 that was suitable for comparison.

22 Q Were there any, what appeared to be, clear
23 indications of a hand or palm print on any other
24 vehicle parts of the exterior of the vehicle?

25 A Yes, there was. The other palm print was on the rear

1 of the vehicle. Um, it's actually on the side rear.
2 I think it was the driver's side rear quarter panel
3 almost right close to the back door.

4 Q By pointing to this area, would be in this area
5 on this picture?

6 A Right. Yeah.

7 Q And, again, was it your ability to -- were you
8 able to photograph that apparent palm or
9 handprint?

10 A Yes, we were.

11 Q Were you able to extract any sort of physical
12 print from that?

13 A Yes, we were.

14 Q And were you able to match that to any known
15 sample that was provided to you?

16 A No, I was not.

17 Q Now, specifically, in this case, you were
18 provided with a number of family members of the
19 Avery family; correct?

20 A That's correct.

21 Q And at one point you were provided with Brendan
22 Dassey's, uh, I believe it was fingerprints and
23 palm print?

24 A That's correct, I was.

25 Q Were you able to compare -- or did you do a

1 comparison of that print from the side of the
2 vehicle with the known print from Brendan Dassey?
3 A Yes, I did.
4 Q Were you able to make a match?
5 A No, I was not.
6 Q I'm going to show you what's been marked -- and
7 that last one, by the way, for the record, was
8 Exhibit 141. I show you what's been marked as
9 Exhibit 144. You had mentioned that in the
10 interior of the vehicle there was some items that
11 you attempted to lift the prints from. May have
12 actually done so; correct?
13 A That's correct.
14 Q If you can see -- I'll provide you with a
15 pointer.
16 A Okay.
17 Q Do you see any items on the interior of the
18 vehicle that you were able to obtain some
19 comparable prints from?
20 A Um, I believe that's a water bottle right in there I
21 know of, and another one right here, possibly. I
22 think there was a total of three water bottles. And
23 I did get some prints off of, uh, either one or two
24 of those that I was able to lift.
25 Q Were you able to obtain any usable prints from

1 the black CD case?

2 A I'm going to have to refer to my notes, if you don't
3 mind.

4 Q That's fine.

5 A Yes, I was.

6 Q So, you -- can you tell, from your notes, then,
7 what, exactly, from the interior of the vehicle,
8 you were able to extract a usable or comparable
9 print?

10 A Yes. From my notes -- well, from my report, I was
11 able to get them off of, uh, about five different
12 items in the vehicle. For one, um, there was a -- a
13 crunchy granola wrapper that I was able to get a -- a
14 latent print off of that was suitable. Uh, one of
15 the Aquafina water bottles that were in there.

16 The, um, um, black plastic CD case,
17 which is right there, and another partially full
18 bottle of Aquafina water.

19 Q And from these items from the interior of the
20 vehicle, were you able to match with any of the
21 known samples provided to you during this
22 investigation?

23 A No, I was not.

24 Q And, specifically, later, you were provided with
25 Brendan Dassey's prints? Again, palm prints and

1 fingerprints?

2 A That's correct.

3 Q Were you able to match anything from those
4 interior items, which -- with the known, uh,
5 sample from Brendan Dassey?

6 A No, I was not.

7 Q Do you recall, at anytime during this
8 investigation, when you were asked to assist law
9 enforcement, were you ever asked to, um, examine
10 and determine if there were any prints on shell
11 casings?

12 A No, I was not.

13 Q So, if I were to show you a box of shell casings,
14 you would never have looked at those; correct?

15 A No.

16 Q So, you would have no idea if there were any
17 available prints, either latent or otherwise,
18 that could be drawn from those casings?

19 A No.

20 Q I'm going to show you what's been marked Exhibit
21 82 on the big screen, and do you recall, at
22 anytime during your involvement in the
23 investigation, having an opportunity to, um,
24 examine and determine if there were any usable
25 prints from the item that's on the screen?

1 A Yes. The headboard was submitted to the lab, and I
2 processed that. And I was able to develop, uh, one
3 print suitable for comparison, and identified that
4 one as, um, being from Steven Avery.

5 Q So that was the only print that you were able to
6 find?

7 A That's correct.

8 Q I'm going to show you what's been marked as
9 Exhibit 107. Do you recall, at anytime during
10 your involvement in this investigation, being
11 provided with this Blackjack creeper in the
12 middle of the picture?

13 A No, I was not.

14 Q So, if there were any prints, you wouldn't be
15 able to tell us whether or not there were any
16 there; correct?

17 A No. I never examined that item.

18 Q Do you recall, specifically, what items were
19 actually provided to you to look at?

20 A The only other one that was provided to me, that I
21 didn't collect myself out of the vehicle, I believe,
22 was the headboard.

23 Q So, no leg irons or handcuffs were provided to
24 you?

25 A No, they were not.

1 Q The gun, itself, was not provided to you --

2 A No.

3 Q -- to look at?

4 A No, it was not.

5 Q This bleach bottle here?

6 A No.

7 Q Okay. I suppose I could go through each item of
8 evidence with you, and the answer would be you
9 didn't look at any of -- anything else other than
10 what you've already testified to?

11 A That's correct.

12 Q And no known -- or no prints matched Brendan
13 Dassey; correct?

14 A No, they did not.

15 ATTORNEY FREMGEN: Okay. I have nothing
16 else, Judge. Thank you.

17 THE COURT: Cross.

18 ATTORNEY GAHN: Thank you, Judge.

19 **CROSS-EXAMINATION**

20 BY ATTORNEY GAHN:

21 Q Do you do any training in, uh, DNA, uh, lifting
22 prints around the state or for any law
23 enforcement agencies?

24 A I -- I do training in, um, the evidence tech school.
25 At times, I'll go in there and teach latent print

1 comparison and latent print development.

2 Q And when you teach, um, at the tech -- the
3 evidence technician schools, do you teach them
4 which surfaces are more amenable to getting
5 prints from than others?

6 A Yes, I do. I give them my experience as far as what
7 I have and have not been able to get prints from in
8 the past.

9 Q And do you believe that the evidence technicians,
10 after attending that training, are capable of
11 making those decisions on what to send for
12 possible print analysis?

13 A I would assume so, yes.

14 Q Could you tell the jurors some of the factors
15 that play into, uh, whether a surface might be a
16 good surface to capture a fingerprint?

17 A Well, actually, it depends on two things. It depends
18 upon the surface, and it also depends on -- on the
19 nature of the person's skin. Uh, some people with
20 normally very dry hands don't leave lot of
21 fingerprints. Uh, or if they have very rough hands,
22 let's say they're construction workers or brick
23 masons or something, that's going to erode and wear
24 down the fingerprints, they leave very bad
25 impressions.

1 Um, the best surfaces that we have to
2 develop prints off would be something that's very
3 smooth, um, such as, glass, uh, uh, vehicle side
4 was a -- was a good medium for it. Uh, the
5 headboard I was lucky to get a print. Wooden
6 items usually don't do so well.

7 Uh, very, very small items are
8 difficult, because it doesn't leave enough of
9 a -- a -- enough of a fingerprint pattern on them
10 to be able to identify. Uh, we get syringes in
11 all the time, and they want to get the top of the
12 syringes to see if we can develop prints on
13 those. And I have. But there's just not enough
14 individual characteristics to put in that pattern
15 area to be able to identify the print.

16 Q I'm going to ask, um, Detective Wiegert to just
17 bring you up one of our exhibits, uh, that
18 Mr. Fremgen talked to you about, and what --
19 Exhibit 128. And I'd ask you to just, uh, look
20 at -- These are shell casings which were
21 recovered from the garage of Steven Avery. Um,
22 could you talk to the jurors a little bit about
23 your, uh, opinion on the chances of getting
24 fingerprints from an item that size and, uh,
25 explain the factors involved in that?

1 A I suppose it is possible. I have probably processed
2 over a thousand of these, and not one time have I
3 ever gotten a fingerprint suitable for comparison.
4 The best I've ever been able to do is maybe get a
5 little bit of ridge detail on there. But it -- it
6 wouldn't be enough for an identification at all.

7 Another factor involved is, when these
8 are shot, they get hot, and the heat isn't very
9 good on a fingerprint either. So you have two
10 factors going against them. One, the size of it,
11 and, two, what the heat does to the fingerprint.

12 Q And are these examples of your experiences that
13 you teach evidence technicians when you go to the
14 technical schools and teach?

15 A Yes, they are.

16 Q And this is what the evidence technicians at the
17 law -- local law enforcement agencies learn from
18 you?

19 A Well, either from me or whoever happens to be
20 teaching their class at that time, yes.

21 Q And they, therefore, are capable of making
22 decisions on what to send forward to the crime
23 lab for analysis?

24 A Yes, they are.

25 Q Can fingerprints -- prints be cleaned off an

1 object or wiped off?

2 A Oh, most assuredly. They're very fragile. They're
3 made 98.5 percent water. Uh, so wiping them off,
4 it'd be very easy.

5 Q And when you, uh, examined the Rav 4, Teresa
6 Halbach's Rav 4, did you also -- did you,
7 yourself, do the inventory of those items that
8 you found in the Rav 4?

9 A Yes, I did.

10 Q And did you know that it was Teresa Halbach's Rav
11 4?

12 A Yes, I did.

13 Q And, um, the -- the fingerprints that you found,
14 uh, you found identifiable prints, I believe, you
15 testified to, on two water bottles; is that
16 correct?

17 A That's correct.

18 Q A CD case?

19 A That's correct.

20 Q And a granola wrapper?

21 A That's correct.

22 Q And could -- and those are items that very well
23 could have belonged to Teresa Halbach?

24 A I suppose so, yes.

25 Q And she would have handled those?

1 A That's correct.

2 Q But did you have exemplars of Teresa Halbach to
3 compare?

4 A No, I didn't. She had no record on file.

5 Q Did, um -- does there -- does a time ever come
6 when you make decisions on whether to examine
7 something for a fingerprint or maybe send it for
8 a DNA analysis first, or maybe do a DNA first and
9 some other tests second? Do those questions come
10 up?

11 A It comes up all the time, yes.

12 Q Are you aware that, um -- do you know who Sherry
13 Culhane is?

14 A Yes, I do. She's the section head of our DNA
15 section.

16 Q And, um, when you did the inventory of the Rav 4,
17 I'm -- did you observe there were blood stains
18 and blood stain patterns in that Rav 4?

19 A Yes, I did.

20 Q And do you know, uh, whether Sherry Culhane
21 tested those blood stain patterns?

22 A Yes, she did.

23 Q Now, do you know whether, um, she determined
24 whether the blood of Steven Avery was found in
25 that Rav 4?

1 A Yes, I do. She -- I've seen her report. She --
2 there was her -- his blood in there.

3 Q And, um, Nick Stahlke, of your office, also
4 issued a report that, uh, the blood stain
5 patterns he found were indicative of an actively
6 bleeding person; correct?

7 A That's correct.

8 Q So, uh, is it fair to assume that, uh, Steven
9 Avery was inside that Rav 4?

10 A I believe so, yes.

11 Q Did you find his fingerprints in the Rav 4?

12 A No, I did not.

13 Q So, the absence of someone's fingerprints does
14 not mean that the person was not at the crime
15 scene, does it?

16 A Not at all.

17 Q Thank you, sir.

18 ATTORNEY GAHN: That's all I have.

19 THE COURT: Any redirect, Counsel?

20 ATTORNEY FREMGEN: Just a few. Excuse me.
21 Just a few.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q Do you -- do you know whether or not, uh, Brendan
25 Dassey has characteristics of his hands that are

1 dry or greasy?

2 A I would have to examine his hands. I -- I couldn't
3 tell you that.

4 Q You can certainly say, however, that, as to the
5 three items in the vehicle, they did not match
6 the known sample of the fingerprint of Brendan
7 Dassey?

8 A No, they did not.

9 Q Now, you mentioned that, often, smoother surfaces
10 are easier to either find a visible or even a
11 latent print?

12 A Yes, they are.

13 Q Uh, would smooth, steel handcuffs be something
14 that might be able to extract a fingerprint from?

15 A They could, possibly. Again, I'd have to examine the
16 handcuffs to be able to tell you if that surface
17 would be good enough. Or if they were in good shape,
18 uh, there's a pretty good chance I could find them.
19 But I've seen some of these cuffs that the finish was
20 worn off and they were rusted, and in a situation
21 like that, it'd be more difficult.

22 Q Would these, for instance, be something that you
23 might be able to extract a fingerprint from?

24 A I believe so, yes.

25 Q And I'm showing you what's been marked as Exhibit

1 92. It's actually Crime Lab Number CJ-2?

2 A Okay.

3 Q But you weren't provided with these, uh --

4 A No.

5 Q -- to review?

6 A This -- this is the first time I've seen them.

7 Q Thank you.

8 ATTORNEY FREMGEN: Nothing else.

9 RECROSS-EXAMINATION

10 BY ATTORNEY GAHN:

11 Q And, again, items can be cleaned or wiped off --
12 uh, fingerprints wiped off or cleaned from an
13 item?

14 A That's correct.

15 Q Thank you.

16 ATTORNEY GAHN: That's all I have also.

17 THE COURT: You may step down.

18 Mr. Fremgen, any additional witnesses this
19 afternoon?

20 ATTORNEY FREMGEN: We'll have a
21 psychologist who's prepared to testify at --
22 starting at 8:30 in the morning. Take a -- probably
23 majority of tomorrow.

24 THE COURT: All right. I take it that's a
25 no for this afternoon?

1 ATTORNEY FREMGEN: Sorry. No for this
2 afternoon, correct.

3 THE COURT: All right. Uh, ladies and
4 gentlemen, I'm going to excuse you at this time.
5 Remember, you are not to talk about the case or
6 anything you've heard or anything connected with it.
7 Thank you.

8 (Jury out at 2:14 p.m.)

9 THE COURT: Counsel, before coming out here
10 on the record, we have a brief -- we had a brief
11 discussion in chambers. It's my understanding, uh,
12 there's some matters we should make of record this
13 afternoon. Mr. Kratz, I'm going to turn to you
14 first. You may or may not have a motion or an
15 argument?

16 ATTORNEY KRATZ: I do, Judge. If I
17 could have just a moment to grab my materials.
18 Thank you, Judge. As this Court recalls, a
19 motion was argued in a pretrial manner regarding
20 the admissibility of testimony of a Dr. Robert
21 Gordon. Dr. Gordon provided this Court through,
22 um, videotape testimony, uh, with something
23 called an offer of proof, which is expected trial
24 testimony, and based an opinion on what
25 Dr. Gordon believed evidence at this trial was

1 going to establish.

2 Dr. Gordon, as this Court knows, uh,
3 has, uh, opined in a, uh, written report, and in
4 his offer of proof, that, uh, Brendan Dassey, uh,
5 was, in fact, an individual who was, uh, using
6 his term now, "vulnerable to suggestibility".

7 The State had objected in a, uh, oral
8 argument, as well as a, uh, written provisions to
9 the Court, to Dr. Gordon's testimony, noting that
10 this kind of evidence has not been, uh, admitted
11 in the state of Wisconsin, at least to this
12 point. And whatever, uh, marginal relevance
13 there may be, uh, is certainly outweighed by the
14 danger of confusion, uh, of the jury, or unfair
15 prejudice.

16 Um, nonetheless, uh, the Court, uh,
17 reasoned, in a pretrial decision, that Dr. Gordon
18 would be allowed to testify, uh, as to the area
19 of suggestibility, again, based upon, uh, an
20 offer of proof.

21 Uh, I recall, and I'm sure, um, the
22 Court, uh, has a recollection as to, um, my
23 argument, both oral and written, uh, cautioning,
24 uh, this Court as to its pretrial ruling prior to
25 even knowing what the trial testimony was going

1 to be, especially as it relates to foundation or
2 to relevance. And what I argued, Judge, was that
3 it's going to depend on who is going to testify
4 in this trial that Brendan Dassey's statements
5 were the product of suggestibility.

6 In other words, that somebody had to
7 come before this Court and claim that Brendan
8 Dassey's statements to law enforcement officials,
9 uh, were, in fact, the product of law enforcement
10 behavior, law enforcement, uh, suggestibility,
11 or, at the very least, some coercive practices by
12 law enforcement, for Dr. Gordon's testimony to
13 ever be relevant.

14 Uh, relevance, uh, of course, is, uh --
15 is well-defined, and this Court included, uh,
16 that in its, uh, pretrial ruling. And I'm not
17 going to, uh, reargue or belabor that. I agree
18 with the Court's, uh, definition and explanation
19 as to relevance.

20 Uh, now, however, we're at the point in
21 the trial where we don't have to guess as to what
22 the trial testimony is going to be. We don't
23 have to call it an offer of proof anymore, or,
24 uh, expect or, um, uh, presuppose what some trial
25 testimony may be. We've now heard what the

1 defense theory of the case is, what the defense
2 version is, and as, uh, announced by this Court,
3 and as predicted by the State in my written
4 brief, Brendan Dassey, himself, has testified and
5 has provided to the Court, uh, with a version of
6 events or an explanation as to, uh, the
7 admissions, or what we've referred to as the
8 confession, given, uh, in this case.

9 Uh, importantly, Judge, uh, Mr. Dassey
10 today, uh, when testifying in this trial, said
11 nothing of suggestibility despite Mr. Fremgen's
12 best efforts, uh, in continuing to ask Mr. Dassey
13 about, uh, things like suggestibility.
14 Mr. Dassey's responses, when he didn't say, "I
15 don't know", um, Mr. Dassey's, uh, response was
16 something called confabulation. That is, that he
17 made it up. That he made up the, uh, version of
18 events that he told law enforcement officials.

19 Confabulation is, of course, um,
20 absolutely a separate, uh, concept than
21 suggestibility. Uh, and when Mr. Dassey and the
22 defense, through Mr. Fremgen and, uh,
23 Mr. Edelstein, who, I assume, knew what
24 Mr. Dassey was going to testify about today,
25 present that theory of defense, and that theory

1 is, uh, devoid of any mention of suggestibility,
2 well, then, Dr. Gordon's testimony just simply no
3 longer becomes relevant.

4 Uh, this Court's pretrial, uh, uh, order
5 and ruling, which, uh, the State respects, uh,
6 very much, must simply -- uh, is no longer based
7 upon, uh, what the trial evidence is in this
8 case.

9 When Mr. Dassey explains, uh, that, uh,
10 the version of events given to law enforcement
11 is, uh, the product of -- of fabrication, or even
12 if, uh -- if we believe that it's the product of,
13 uh, some memory several years ago of some book
14 that he may or may not, uh, have read, uh, it is
15 just not suggestibility.

16 Uh, I then, uh, and at this time, renew
17 my motion, ask the Court to reconsider its
18 finding as to Dr. Gordon's testimony. We're
19 asking that Dr. Gordon's testimony be excluded.
20 We don't believe there is any foundation in this
21 record, uh, nor is there any relevance, uh, to,
22 uh, Dr. Gordon's ultimate opinion that, uh,
23 Mr. Dassey is vulnerable to suggestibility.

24 Now, we understand that this Court has
25 already limited Dr. Gordon's testimony. This

1 Court's already previously indicated that
2 Dr. Gordon can't talk about whether the
3 confession was true or false. That is, uh,
4 whether it was a false confession. Can't talk
5 about a coercion or the circumstances
6 surrounding, uh, the, uh, interrogation. And
7 although there are experts that can talk about
8 that, Dr. Gordon admits that he's not one of
9 those kind of, uh, individuals. But his testing
10 and his opinion, uh, as limited to
11 suggestibility, uh, simply, uh, is not, uh,
12 relevant. Would ask the Court revisit and
13 exclude the testimony.

14 Alternatively, Judge, uh, we are asking,
15 if the Court continues to allow Dr. Gordon's, uh,
16 testimony, uh, in this case, despite, uh, the
17 lack of foundation for his testimony, uh, we
18 would ask the Court, uh, reassert or restate, uh,
19 just what it is that Dr. Gordon can testify
20 about. Just what is relevant about Dr. Gordon's
21 testimony based upon the record currently, uh,
22 before this Court.

23 We certainly don't want to be in a
24 position where we're needlessly objecting during,
25 um, uh, direct examination, uh, or that the, uh,

1 State, unnecessarily, uh, has to cross-examining
2 -- cross-examine, uh, Dr. Gordon, uh, on issues
3 that, uh, may, in fact, not be allowed through
4 this Court's, um -- this Court's orders.

5 Lastly, Judge, at the conclusion of this
6 motion, that is, at the conclusion of my motion
7 to exclude, or the renewal of my motion to
8 exclude, uh, I would ask, also, to place on the
9 record the, uh, State's request to call, if
10 necessary, rebuttal witnesses.

11 But I have, uh, unfortunately, gotten
12 ahead of myself, and I'm just alerting the Court
13 that we do have that issue to discuss as well.
14 That's all the, uh, comments I have regarding
15 Dr. Gordon's issue. Thank you, Judge.

16 THE COURT: Response?

17 ATTORNEY FREMGEN: Uh, just a little -- a
18 brief one. Well, I'll try to be brief. The State,
19 uh, began its, uh, argument by indicating that, uh,
20 um, they expected Dr. Gordon to testify as to what
21 evidence would indicate in this trial. Well, I
22 don't think that's ever been what we've offered to
23 this Court. And I'm certain that's not what the
24 order of this Court is.

25 What we've offered, previously, is that

1 the doctor would testify as to his conclusions
2 based upon his evaluation of Brendan, his review
3 of the collateral information, which included,
4 uh, the videotape statement that was shown in
5 this court, as well as other statements that had
6 not been provided to the jury, and he would also,
7 uh, testify as to the different tools of
8 evaluation, the different, um, um, tests that he
9 actually conducted, and -- and the purpose for
10 those tests, including the Gudjonsson
11 Suggestibility Test.

12 We intend to offer the same testimony
13 with the same limitations that the Court imposed
14 on his testimony per the order of April 5. The
15 State's argument today is that there needs to be
16 additional foundation, essentially, or that there
17 hasn't been a sufficient foundation placed on the
18 record for the doctor's testimony.

19 Part of what the State argues is --
20 well, I -- I think maybe he misspoke, but
21 Mr. Kratz said foundation as to suggestion or
22 coercion. We've never once indicated that
23 Dr. Gordon would ever testify as to any coercion.
24 In fact, he even, in the offer of proof, said I
25 don't have the ability to do that and would not

1 offer his, uh, uh, opinion as to the officer's,
2 uh, techniques in regards to coercion.

3 So that was never an option. It was
4 never going to be something offered to the Court.
5 The indication that we provided to the Court,
6 with the limitations in the order, simply that he
7 would be testifying about the issue of
8 suggestibility, or vulnerable to suggestion, as I
9 think he referenced in his report.

10 So far, the testimony on direct and on
11 cross of the defendant was that, as to many
12 questions, he answered, I don't know why. When
13 asked why he would admit to a serious offense,
14 such as sexual assault, or first degree
15 intentional homicide, his answer is, I don't know
16 why.

17 At -- I probably could count up, on the
18 transcript, and come up with at least 20 or 25
19 times that that came out. There were times in
20 final cross by Mr. Fallon that -- that this idea
21 of confabulation came up, but there's equal or
22 more, um, testimony in regards to why he did what
23 he did, and his answers were, I don't know why.

24 Our intention is to wrap up what we've
25 started with all the witnesses, with the --

1 Officer Wiegert and with Detective O'Neill, for
2 that matter. Attorney Edelstein's questioning of
3 the -- at least with Detective Wiegert was,
4 essentially, 90 percent suggestibility issues.
5 Promises, lies, suggestion, um, and leading.

6 With Dr. -- with Detective O'Neill,
7 there was a number of questions about suggestion,
8 leading, promises. In fact, the State brought up
9 the subject when the State says there's devoid of
10 anything in the record about suggestibility. The
11 State, on cross of the school counselor, asked
12 her about suggestibility. So the issue has been
13 raised by the State as well. We would certainly
14 object to the ruling changing the original
15 ruling.

16 And as far as offering to the State some
17 sort of a, um -- a road map of where I intend to
18 go, or some, uh, formalized transcript of the
19 question and answers that I intend to -- to
20 elicit from the -- the doctor, I guess I would
21 offer, again, we will follow what the Court
22 ordered, the offer of proof with the limitations
23 that this Court has set upon the testimony, and
24 as to providing to the State some sort of heads
25 up as -- so to speak, I guess I would just

1 mimick what the State has told me throughout
2 this trial, I'll question my witnesses how I
3 want, without having to answer to the State.

4 And, so, I -- I would follow the order
5 that the Court placed on us, and I don't believe
6 that there has been, uh, this lack of foundation
7 that the State is suggesting with the -- the
8 Court, now, to change the ruling before in
9 regards to Dr. Gordon.

10 THE COURT: Mr. Kratz, any response?

11 ATTORNEY KRATZ: I don't have any.
12 Thank you, Judge.

13 THE COURT: All right. Uh, is -- both
14 parties have noted the Court has had an opportunity,
15 prior to this day, to take up the issue of
16 Dr. Gordon and any testimony that he might have to
17 offer. The Court ruled that Dr. Gordon's
18 testimony -- and -- and I did this based on a couple
19 of things, or based on, uh, the instance of seeing a
20 proposed offer of proof from the defense by way of
21 DVD and, as well, uh, the testimony educed by
22 Mr. Kratz at a cross-examination of Dr. Gordon.

23 Uh, under Section 9-0-7-0-2 of the
24 Wisconsin Statutes, uh, expert witness testimony
25 is permitted if the proffered testimony is

1 relevant, if it will assist the trier of fact in
2 some way, shape or form, if the expert is
3 qualified, and if the testimony that's going to
4 be offered is not superfluous -- superfluous or a
5 waste of time. This all stems from a case called
6 **State vs., uh, Walstad** at 119 Wis. 2d 483.

7 I found, uh, initially, that all of
8 these qualifications were met. Uh, there also is
9 a secondary line of reasoning that can
10 occasionally be employed. Namely, that, by
11 virtue of the 6th Amendment of the
12 U.S. Constitution and Article 1 Section 7 of the
13 Wisconsin Constitution, a defendant should have
14 the right to present a defense. And while I
15 didn't make a finding, directly, on that point, I
16 think I alluded to it, at least collaterally, in
17 arriving at the ruling.

18 Mr. Kratz says, uh, in effect, that,
19 based on the testimony offered by this defendant
20 in person today, that the foundation for any kind
21 of testimony from Dr. Gordon with respect to
22 suggestibility is, in effect, vitiated. That is
23 to say, taken away.

24 Uh, that his testimony -- uh,
25 Dr. Gordon's testimony no longer becomes relevant

1 and, thus, it misses on the first, uh, uh, step,
2 the first prong, of the test of whether or not
3 it -- it should be used in this case.

4 Uh, I'm not going to recede from the
5 ruling that I -- I handed down before. I think
6 what we, uh, have, at best today, is testimony
7 that doesn't go to the admissibility of anything
8 Dr. Gordon has to say.

9 And, again, what Dr. Gordon is -- as I
10 understand it -- going to testify to, that based
11 on a number of tests that he administered this
12 defendant, based on the age of the defendant,
13 based on the defendant's, uh, limited, uh,
14 cognitive abilities, that this defendant falls in
15 the category that, scientifically, has been
16 adjudged as being a category of persons being
17 more suggestible or vulnerable to, uh, same
18 things that aren't necessarily true.

19 I think that Dr. Gordon's testimony is
20 still relevant. I think that he is a qualified
21 expert. I think that his familiarity with the,
22 uh, Gudjonsson Suggestibility Scale, and the
23 other tests that were given to, uh, support
24 whatever opinions he's going to give, uh, are all
25 as good today as they were before.

1 Now, with that said, it may be, again,
2 that while his testimony is cer -- I believe
3 admissible, uh, it is up to the jury as to what
4 weight that testimony should -- should give.
5 They are the -- they are the persons that
6 determine the weight.

7 I also find that I -- I do not believe,
8 based on anything I've heard today or during the
9 course of the trial, that his -- his testimony
10 would be, uh, superfluous.

11 Accordingly, I'm going to deny, uh, the
12 State's motion to exclude his testimony.

13 ATTORNEY KRATZ: Judge, I -- and -- and
14 I -- and I don't mean to, uh -- to take issue
15 with the Court, you mentioned that the doctor
16 would testify to being vulnerable to saying
17 things that weren't necessarily true. I think
18 that's exactly what the Court said he could not
19 testify about. He's vulnerable to
20 suggestibility, but whether it's true --

21 THE COURT: I --

22 ATTORNEY KRATZ: -- or not true is
23 something this doctor cannot testify.

24 THE COURT: Right. And -- and I did say
25 that, and, uh, thank you. I'll -- I'll sharpen

1 that up. He -- he can't testify as to what this
2 defendant said as to whether it was true or
3 false. He can testify as to the suggestibility,
4 the vulnerability, based on the factors, but he
5 cannot -- he cannot utter an opinion as to the --
6 the, uh, truthfulness or falsity of anything this
7 defendant said.

8 ATTORNEY KRATZ: Thank you, Judge. As
9 to my, uh, second, uh, purpose for, um, alerting
10 the Court as to, uh, the State's, uh, intent, uh,
11 with, uh, this Court, uh, reaffirming its ruling,
12 the State does intend to, uh, and does offer at
13 this time, two, uh, rebuttal, uh, witnesses.

14 Uh, one is a, um, clinical psychologist,
15 who will directly, uh, rebut Dr. Gordon's
16 testimony as to the testing, IQ, and what, uh,
17 uh, opinions, uh, may be drawn, uh, therefrom.
18 His name is Dr. James Armentrout. Uh, we,
19 previously -- uh, previously, meaning earlier
20 today. I don't mean to indicate, because of the
21 rebuttal nature, that it was, uh, other than
22 today, but, uh, informed defense counsel of our
23 intent to, uh, call Dr. Armentrout as a rebuttal
24 witness.

25 But, secondly, Judge, and something that

1 we have alerted the Court and, uh, counsel to,
2 uh, earlier, uh, was our intent to call an
3 expert, uh, in the, um, areas as to the
4 interrogative process. This Court may recall, as
5 part of Dr. Gordon's, uh, offer of proof,
6 Dr. Gordon indicated that he was not an expert on
7 issues of interrogation strategy or circumstance,
8 but that such experts do exist. Dr. Gordon, uh,
9 conceded that fact to both -- uh, in court and on
10 his, uh, DVDs.

11 The, uh, suggestion, and the effect of
12 the matter is, then, uh, as to the area of
13 suggestibility, uh, there is a -- a prong, if you
14 will, as to the testing, and -- and the, uh, um,
15 IQ, and the age, and the, uh, vulnerability to
16 suggestibility that psychologists talk about, but
17 the other part of that that Dr. Gordon talked
18 about was the circumstances surrounding the
19 interrogation, the strategies, and, uh -- and the
20 like, that, uh -- that were employed, and what,
21 um, after reviewing a specific, um,
22 interrogation, uh, what opinions can be drawn
23 therefrom.

24 State intends, as the defense and the
25 Court knows, uh, to call a, uh, Mr. Joseph

1 Buckley, uh, the president, as I believe, of, uh,
2 Reid and Associates, uh, author, uh, and expert,
3 uh, on issues of the interrogative process.

4 Uh, with the Court, uh, having, uh,
5 reaffirmed this ruling, uh, we simply offer that.
6 If the Court, uh, needs, uh, or the Court wishes
7 some further, uh, offer of proof or sharpening
8 of, uh, that partic -- uh, uh, Mr. Buckley's, uh,
9 relevance, or his intended testimony, we can
10 certainly do that. A report has been tendered to
11 the Court and to, uh, the defense as to, uh,
12 Mr. Buckley's, uh, intended testimony. If I
13 could have just a moment here, Judge.

14 And, Judge, uh, you may want to just
15 take judicial notice of the report of Mr. Buckley
16 that has, uh, been provided to the Court, should
17 Mr. Buckley's testimony be allowed. We'll
18 certainly have that marked as a trial exhibit and
19 will be officially offered at that time.

20 That's all I have as to, uh, again, just
21 by way of, uh, alerting the Court and Counsel,
22 uh, as to the State's intended rebuttal case.
23 Thank you.

24 THE COURT: All right. Uh, does the
25 defense wish to be heard on this, now? Rebuttal, of

1 course, is at the discretion of the Court, and it --
2 it may be you want to wait until you hear what
3 Dr. Gordon has to say. Although, I suspect,
4 Mr. Buckley's rebuttal may have as much to do with
5 the cross-examination of Investigator Wiegert as it
6 does with anything that, uh -- that Dr. Gordon may
7 say.

8 ATTORNEY FREMGEN: Up to the Court. I -- I
9 don't think that Dr. Gordon's testimony,
10 necessarily, is going to be indicative of what our
11 position is with, uh, uh, Mr. Mead (phonetic).
12 Um -- Or, Buckley? I'm sorry. Mr. Buckley.

13 THE COURT: Yeah.

14 ATTORNEY FREMGEN: Uh, our -- essentially,
15 and let me first answer the first comment about, uh,
16 Dr. Armentrout. Um, the only thing I would ask from
17 the State, if, at the time he testifies, if there is
18 any sort of summary of his, uh, impressions laid to
19 some written form, that we be provided a copy prior
20 to his testimony. Whether that be the second he
21 sits down, however the State wishes to provide it,
22 would be great. Also a CV. I mean, we provided our
23 curriculum vitae of our doctor. If we could have
24 Dr. Armentrout's sometime before he testifies, we
25 would appreciate that as well.

1 However, as to, um, uh, Mr. Buckley, we
2 have three essential positions as to why we don't
3 think it's relevant. Number one, it's not a
4 unique subject that this trier of fact, the jury,
5 needs assistance to understand.

6 Um, in fact, they've had two witnesses,
7 already, talk about it. Both detectives.
8 Detective O'Neill and -- and, uh, Investigator
9 Wiegert have testified that they are trained in
10 deceptive practices, um, superior knowledge,
11 whatever language is used to explain why they
12 lied, promised, lead, or suggest to a -- a -- a
13 interviewee in order to get information or
14 extract information they want.

15 So, it's already -- it's a point, I
16 won't say, necessarily, cumulative, but it
17 certainly has been, um, uh, developed and
18 addressed by the State.

19 It also seems to be somewhat of a
20 vouching of the State's witness. Officer -- uh,
21 Mr. Buckley would be testifying, essentially,
22 that the officer's testimony that this is how
23 we're trained and this is just simply, uh, uh, an
24 interview technique would be a -- be an offer to
25 sim -- simply, um, vouch for the voracity of the

1 officer's testimony in that regard.

2 And we also believe that, uh, there are
3 some comments in the report about what is
4 corroborated and what is not that impedes and
5 infringes upon what this jury's role is. And --
6 and the attorneys can certainly suggest to the
7 jury, this is corroborated and this is
8 uncorroborated. And that's fine. But I think
9 it's different having a witness get up there and
10 say, I've reviewed what the police officers did
11 in this case, and let me tell you, jury, this is
12 what they did right, and this is what they found,
13 and this is why you can find this person guilty.
14 I don't think that is the role of a expert.

15 Experts should be offering some sort of
16 testimony that, number one, has to be relevant to
17 some sort of material issue, which we don't
18 think, necessarily, is -- that there is enough,
19 uh, with this offer as of yet, and, number, two,
20 we certainly have to say there is nothing that
21 indicates that this trier of fact needs
22 assistance to understand that.

23 In fact, I believe, in opening,
24 Mr. Kratz mentioned to the jury, comments about
25 officers', uh, questioning and why people don't

1 admit to things that they didn't do, especially
2 as serious as a homicide, because it's just human
3 nature. You all understand that. Quote,
4 unquote. That was what Mr. Kratz said to the
5 jury.

6 Well, if they understand it, then why do
7 they need an expert? So I don't think it's
8 necessary.

9 THE COURT: All right. Mr. Kratz, getting
10 to you, uh, with respect to Dr. Armentrout, Counsel
11 was asking for a copy of his CV and, as well, any
12 sort of summary that you might be able to supply,
13 even if it's at the 11th hour? Are you able to
14 accommodate him on both those counts?

15 ATTORNEY JONES: Well, Judge, there is no
16 written report. There is no summary. Uh,
17 Dr. Armentrout's, uh, opinions will be based, uh,
18 solely and entirely upon what's been provided, uh,
19 by Dr. Gordon. So, the -- the -- the materials
20 that, uh, uh, Dr. Armentrout will be drawing from,
21 they already have.

22 The CV, uh, is something that I will ask
23 to be faxed, and we'll try to get that, uh --
24 we'll try to get that, uh, here, Judge, and --
25 and, uh, accommodate, out of courtesy, uh, uh,

1 the defense.

2 Um, did you ask me something else?

3 I've --

4 THE COURT: No.

5 ATTORNEY KRATZ: -- forgotten. Then

6 I'll be quiet.

7 THE COURT: No. We'll -- we'll get to
8 the -- the issue of what, if anything, Mr. Buckley
9 can testify to based, uh -- based on, in part, what
10 we hear tomorrow, and, in part, uh -- I want to
11 review the -- the -- the report, uh, again. Report
12 was handed -- I believe I got it on Friday from --
13 from the State.

14 ATTORNEY KRATZ: Might I suggest, Judge,
15 that on Wednesday we might convene in court,
16 perhaps, at, uh, 8:00 a.m. and, uh, get some
17 direction. We expect Mr. Buckley to testify in
18 the morning, and I think that is probably
19 appropriate that everybody, not just the State,
20 but that the defense, has fair notice about the,
21 uh, scope of what he'll be allowed to testify
22 about.

23 THE COURT: That's fine.

24 ATTORNEY FREMGEN: Thank you.

25 THE COURT: Any other matters today,

1 gentlemen?

2 ATTORNEY KRATZ: Nothing for today.

3 Thank you, Judge.

4 THE COURT: All right? I'll see you
5 tomorrow at 8:30.

6 (Court stands adjourned at 2:42 p.m.)

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1 STATE OF WISCONSIN)
)SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
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18

19 Jennifer K. Hau
Jennifer K. Hau, RPR
20 Official Court Reporter
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 8

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 24, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

THOMAS 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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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

I N D E X

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1 (Reconvened at 8:32 a.m.)

2 THE COURT: Good morning, counsel. Uh,

3 this is State of Wisconsin vs. Brendan R. Dassey,

4 06 CF 88. Appearances, please.

5 ATTORNEY KRATZ: The State continues in its

6 appearance by Special Prosecutors Ken Kratz,

7 Tom Fallon and Norm Gahn.

8 ATTORNEY FREMGEN: Attorney Mark

9 Fremgen, Attorney Ray Edelstein appear with

10 Brendan Dassey in person.

11 THE COURT: Are you set to proceed?

12 ATTORNEY KRATZ: Yes, Judge.

13 THE COURT: Do so.

14 ATTORNEY FREMGEN: Call Dr. Robert Gordon.

15 **DR. ROBERT GORDON,**

16 called as a witness herein, having been first duly

17 sworn, was examined and testified as follows:

18 THE CLERK: Please be seated. Please state

19 your name and spell your last name for the record.

20 THE WITNESS: Could I get prepared first,

21 please?

22 THE CLERK: Sure.

23 THE WITNESS: My name is Robert H. Gordon,

24 G-o-r-d-o-n.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY FREMGEN:

2 Q Doctor, do you -- can you describe what your, uh,
3 educational background is?

4 A Sure. I have a Bachelor's Degree from Purdue
5 University. That was obtained in 1972.

6 I received my Doctorate in clinical
7 psychology from Washington University in 1976.

8 I completed a one-year internship at the
9 University of Tennessee, School for Health
10 Sciences.

11 And I subsequently audited two classes
12 in the early 80's at the University of Wisconsin
13 Law School.

14 I've, uh, attended a variety of
15 workshops in the meantime and, likewise, have
16 given oral presentations, seminars and training
17 than I've gone to workshops.

18 Q Where do you -- where are you currently employed?

19 A Until, uh, Friday, I'm currently employed with
20 Forensic Psych Associates. Its, uh, office -- main
21 office is in Janesville. Uh, other offices are
22 located in Chicago, Milwaukee and Rockford.

23 Q And you said until Friday. Are you changing
24 positions as of Friday?

25 A I am.

1 Q And where are you -- where will you be working at
2 that point?

3 A As of, uh, Tuesday, May 1, I will be the Director of
4 Forensic Evaluation Services at St. Louis Behavioral
5 Medicine Institute Health -- St. Louis Behavioral
6 Health Institute, affiliated with St. Louis
7 University.

8 Q What other work or, uh, employment history do you
9 have involved with clinical or forensic
10 psychology?

11 A Well, I began my career, primarily, as a clinical
12 psychologist. I worked for the first two years out
13 of -- after I completed my graduate degree, at the
14 Janesville Counseling Center down -- that's what is
15 currently known as -- it's a part of the Rock County
16 Health Care Center System. Uh, county system. And I
17 was a clinical supervisor there.

18 And, then, from 1978 until present, I
19 have been in private practice, running my own
20 office, employing some staff, and doing
21 counseling, consulting to different agencies,
22 probation and parole, counseling -- other
23 counseling services, uh, Department of Human
24 Services, etc.

25 And, then, over the past, uh, five

1 years, I've, uh, exclusively, uh, limited my
2 practice to forensic work, except I do a few free
3 counseling sessions and run a free group at a
4 church, and I -- I will continue that on a
5 one-time per week -- or one-time per month basis,
6 uh, by phone, once I gets to St. Louis, but with
7 everyone else in a church -- in a group.

8 Q Are you a member of any professional
9 organizations or associations?

10 A I am.

11 Q Can you describe those organizations related to
12 your field of expertise?

13 A Well, they're listed on my CV, and they include the
14 American Psychological Association, of which I'm a
15 member. I was designated, uh, oh, maybe 20 years
16 ago, as being a Fellow of the Wisconsin Psychological
17 Association.

18 I'm also a member of the Division of
19 Wisconsin Psychological Association called the
20 Society of Clinical and Consulting Psychologists.
21 Then, there's the Division of the American
22 Psychological Association, of which I'm a member
23 of the American Psychology Law Society.

24 I'm also, um, a member of three smaller
25 organizations. The Association for the Treatment

1 of Sex Abusers, the Illinois Sex Offender
2 Management Board, and the Milwaukee Area
3 Psychological Association.

4 I'm sorry for reading, but I want to
5 make sure it's accurate.

6 Q You mentioned that this is on your CV?

7 A That's correct.

8 Q And CV, you mean by that, Curriculum Vitae?

9 A Precisely.

10 Q Another word for resumé?

11 A Yes, sir.

12 (Exhibit No. 226 marked for identification.)

13 Q I'm going to show you what's been marked as
14 Exhibit 226. Is that the Curriculum Vitae you're
15 referencing?

16 A Yes.

17 Q Now, you had mentioned -- or I think you were
18 going into discussing psych -- certain boards,
19 and I think you mentioned, "up until recently."
20 Can you describe, first of all, what boards, and
21 what you mean by "up until recently?"

22 A Yes. I was on three boards and resigned due to my
23 changing position. The, uh, boards include, uh, in
24 the past, being on the advisory committee to the
25 University Wisconsin-Whitewater, uh, Chancellor, the

1 Dean of, uh, Arts and Sciences.

2 I, also, was on the Circle of Friends
3 for the court appointed special advocate in Rock
4 County. Um, I also, in the past, was a -- on the
5 board of directors for the Society of Clinical
6 and Consulting Psychologists that I referred to
7 already. There may have been one or two others.
8 I didn't check my notes. I'm sure I omitted one.

9 Q Now, you've mentioned clinical psychology along
10 with the term "forensic psychology." Can you
11 describe what the difference is between the two?

12 A Sure. There are many components of Psychology,
13 whether it's clinical psychology, um, experimental
14 psychology, industrial psychology. There are
15 different specific aspects of psychology.

16 But when you apply that body of
17 knowledge to matters that come before the court,
18 to assist the court or a jury in making
19 decisions, that's when it becomes forensic in
20 nature. So that you can have a forensic social
21 psychologist or forensic engineer.

22 Forensic means, a body of knowledge that
23 qualifies you by the court to be an expert, to
24 offer any information to the court and to the
25 jurors.

1 Q How long have you been involved in forensic
2 psychology, for instance?

3 A I've been involved in forensic psychology since 1978.
4 But it's been on a increasing basis since that time.
5 I began by doing mental commitment evaluations and
6 guardianship evaluations.

7 Q Have you ever testified in court before?

8 A Yes.

9 Q Do you -- can you recall how many times you've
10 been in court as a -- testifying in this type of
11 capacity?

12 A Uh, Mr. Fremgen, I -- I came to a better estimate of
13 that, and it's an estimate, last night, uh, as I
14 calculated it, and that would be roughly 2,500. But
15 that number is inflated, because many of those have
16 been done at the request of the Department of
17 Probation and Parole, where I consult or I consulted
18 up until this past Thursday.

19 And, also, they contain -- those numbers
20 are -- are higher because the significant portion
21 also are mental commitment evaluations and
22 guardianship evaluations.

23 Q So it's not necessarily jury trials, for
24 instance?

25 A No, sir. Uh, the majority are not jury trials. The

1 majority are before the judge.

2 Q So, just a judge, is what you're saying?

3 A I wouldn't say, just the judge, I'd say before the
4 judge.

5 Q Before the court.

6 A Yes.

7 Q Have you authored or co-authored any
8 publications, or any articles, or any books?

9 A Yes.

10 Q You, again, briefly listed, described the topic
11 of the -- the, uh, publication?

12 A Could you -- could I --

13 Q Briefly list, describe what that authored
14 publication is?

15 A Uh, I co-authored one book called, *Substance Abuse,*
16 *Homicide and Violent Behavior.* I have also, uh,
17 self -- self-published a facilitator's guide and a
18 learner's workbook regarding treatment of sex
19 offenders.

20 Then, I have a number of articles that
21 have been published. Some have been published in
22 what's called peer reviewed journals where you
23 submit it to psychologists and other mental
24 health professionals. And they decide whether
25 it's worthy of publication.

1 In other occasions, my, uh -- some of
2 the 12 articles that I've written have been in
3 more like trade journals, like put out by the
4 different -- like a bar association or psychology
5 association. And those would not be called peer
6 reviews. Those are re -- reviewed by editors of
7 the journals or -- or trade publications.

8 Q Have any of those peer review publications
9 involved aspects of forensic psychology?

10 A One did, indirectly.

11 Q And what was that?

12 A Well, that was my dissertation. And I didn't foresee
13 it as being forensically-related, but it is. And
14 it's entitled, "Diagnostic Compliance in Rorschach
15 Interpretation as a Function of Group Member Status."
16 That was my dissertation to get my Ph.D. And, also,
17 I summarized it better than I did the title, uh, to
18 be published in a peer-related article.

19 Q How often do you spend time familiarizing
20 yourself with the current research in the field
21 of forensic psychology?

22 A Well, my wife thinks that I do that quite often, and
23 that she's right. Um, I receive journals, I review
24 journals. I, uh, go to -- go to particular workshops
25 and seminars. And I also, thanks to the modern-day

1 technology, um, probably spend an average of one to
2 two hours in the evening, four days a week on the
3 average, uh, seeing what current articles are
4 published in a variety of areas regarding cases in --
5 forensic cases in general or cases that I'm
6 consulting on.

7 Q Why is it important to continue to follow the
8 research or follow, um, trends in forensic
9 psychology?

10 A Well, it's -- it's two reasons. One is, ethically
11 required by the ethic code -- ethical codes that I
12 subscribe to, or ascribe to, simply by my
13 participation in these organizations I've mentioned.

14 The other reason is more important to
15 me. It's personal. When I am offering
16 information that may be helpful to judges or
17 juries that in -- affect, life, liberty,
18 finances, um, people's rights, then, uh, that's
19 something that I personally take very seriously.

20 Q Have you ever presented or trained -- you
21 mentioned you've gone to training sessions. Have
22 you ever trained others in your field of
23 psychology?

24 A I have.

25 Q Can you briefly describe those presentations or

1 trainings?

2 A Well, they've been on a variety of forensic topics.
3 I could enumerate those, if you like. But I can
4 summarize by saying that I counted them up, and there
5 are 100 or -- give or take a couple hundred
6 presentations that I've provided to either attorneys,
7 and they've been continuing legal education approved
8 for all, and I have also presented to probation
9 officers, social workers, federal probation chiefs
10 regarding a variety of forensic matters.

11 Uh, some of them have been small. Only
12 10, 15, 20 individuals at, uh, a bar association.
13 Others have been large. When it's been, for
14 example, uh -- most recently, I testified -- not
15 testified, but spoke at, regarding sex off --
16 sexual assault homicide in capital cases, in,
17 uh -- in Texas at a -- a national conference.
18 So, it -- it runs the gamut.

19 Q Previously, you indicated you've testified over,
20 approximately, 2500 times in various, uh, types
21 of proceedings. When you've testified in the
22 past, do you testify solely for one side or the
23 other?

24 A No, sir.

25 Q Do you have any percentage as to what -- how --

1 how often you're called by one side or other?

2 A Pardon me?

3 Q Do you have any percentage, that you're aware of,
4 as -- as far as how often you're called by, let's
5 say, for instance, the defense?

6 A That's a different question than you asked before.
7 By the defense, probably 60 percent. By the
8 prosecution, probably 40 percent. But that's still
9 the minority of who request my services.

10 Q Now, let me just, uh, skip ahead. Are you
11 familiar with the term, quote, false confession,
12 unquote?

13 A Yes.

14 Q And how is this term fam -- familiar to you as a
15 forensic psychologist?

16 A Well, it's familiar to me by cases I've been involved
17 in, by my understanding of the literature and the
18 tests available to evaluate them. And it's related
19 to evaluating whether, um, or -- it's, uh, related to
20 helping address, uh, false confessions, and -- which
21 are admitting to wrongdoing when it didn't exist, uh,
22 or overstating one's involvement in a crime and --

23 Q Is there another term that's used in this field?

24 A Well, beginning in 1908, there was Münsterberg, who
25 wrote his first book on causes of false confession at

1 the turn of the century.

2 Also, not this century, Binet, uh,
3 showed pictures, and then saw if there was a -- a
4 change in responses when the pictures were shown
5 again.

6 And, most recently, in the -- in the
7 1980's, uh, Gisli, and I've been -- I've been
8 told it's Gudjonsson, uh, developed what's called
9 "interrogative suggestibility." And that was in
10 the 80's. And he has done extensive research,
11 uh, and come up with a Gudjonsson Suggestibility
12 Scales to assess for two aspects of, uh,
13 interrogative suggestibility.

14 Q Is Gudjonsson the foremost expert in this field?

15 A He's certainly one of the leading experts. Uh, he
16 was originally a -- a detective in Iceland. He went
17 over to London. He became a psychologist. He was
18 asked to consult about confessions. He now is the
19 Professor of Forensic Psychology at the Institute of
20 Psychology at Kings College in London.

21 He's written a -- a -- I didn't bring it
22 with me, a thick handbook, which, not to be
23 blasphemous, but would be the bible of, uh, the
24 psychology of false confessions and psychology of
25 false confessions. I don't have the exact title

1 with me, but, uh, it's one that's heavily relied
2 upon.

3 Q Is the Gudjonsson Scale of Suggestibility, what
4 you've just recently described, the only tool
5 that a forensic psychologist has available to him
6 in determining whether a person has the
7 psychiatric or psychological characteristics that
8 may cause him to be vulnerable to give any false
9 confession?

10 A No.

11 Q What -- what other tools do you believe, as a
12 forensic psychologist, are important to consider
13 in making a determination of suggestibility?

14 A Focusing on tools as your --

15 ATTORNEY KRATZ: Judge, I -- I'm sorry. If
16 I may interpose an objection? Perhaps Mr. Fremgen
17 is doing this intentionally, but he's interposing
18 the terms "suggestibility" and "false confession."
19 If we're talking about false confession, I'd ask
20 that he ask that question. If he's talking about
21 suggestibility, I'd ask that he phrase it in those
22 terms.

23 THE COURT: So, you're objecting to the
24 form of the question as a compound question?

25 ATTORNEY KRATZ: I am, Judge. They are

1 two, I think, distinct, uh, concepts, and I'd ask
2 that those be, uh, referenced to any specific
3 questions. Thank you.

4 THE COURT: Mr. Fremgen?

5 ATTORNEY FREMGEN: I'll change -- I'll --

6 THE COURT: Okay.

7 ATTORNEY FREMGEN: -- rephrase.

8 Q (By Attorney Fremgen) Can you describe the other
9 tools that you would consider important in making
10 a determination whether a person, uh, has those
11 personality or psychological characteristics that
12 make them vulnerable to suggestion?

13 A Yes. Uh, generally speaking, there are tests
14 regarding intellectual functioning, IQ, uh, they
15 could be memory, they could be tests associated with
16 assessing personality traits, characteristics
17 associated with the likelihood of being suggestible.
18 Uh, those are the main ones.

19 Q Now, are these --

20 A The main categories.

21 Q I'm sorry. Are these tests developed solely to
22 determine whether a person may be suggestible?

23 A The, uh, only one that was solely developed that
24 personal is the Gudjonsson Suggestibility Scales.

25 Q So the other tests that you were just talking

1 about in a -- more of a generic form, are they
2 used in other, um, evaluations in forensic
3 psychology, for instance?

4 A In forensic psychology and non-forensic psychology,
5 true.

6 Q Why is it that, uh, these tests that have,
7 potentially, nothing to do with suggestibility,
8 are important tools to consider as a forensic
9 psychologist in making that determination?

10 A Well, there are different psychological
11 characteristics that an individual might exhibit or
12 might possess that, in turn, would increase or
13 decrease the likelihood that they would be
14 suggestible. And those include, intellectual
15 functioning, learning problems, memory problems,
16 personality characteristics. Whether a person, for
17 example, is passive, withdrawn, socially introverted,
18 quiet, anxious, wanting to be ple -- desiring to
19 please, uh, being in terms of social desirability,
20 um -- I must be missing something, but I don't recall
21 right now.

22 Q Now -- and -- and, again, is this something that,
23 for instance, Gudjonsson recommends forensic
24 psychologists to consider in addition to his
25 suggestibility scale?

1 A Absolutely.

2 Q Have you performed these tests on actual subjects

3 to determine whether a person may be susceptible

4 or vulnerable to suggestion before?

5 A Yes.

6 Q And -- and do you -- can you tell us how often or

7 how many times, that is, that you performed these

8 tests to assist you in making determinations of

9 whether a person is vulnerable to suggestion?

10 A I should keep better records, but the number is --

11 compared to the 2,500, is definitely lower. It's

12 more like 5 to 10.

13 Q And have you ever testified in a court, such as

14 this, in that regard?

15 A Yes.

16 Q And -- and how often have you done that?

17 A Three times. Well, three that I can recall.

18 ATTORNEY KRATZ: Judge, I -- I'm sorry.

19 Again, I interpose an objection as to vague. "In a

20 court, such as this." Are we talking about a jury

21 trial? Or are we talking about just before a judge?

22 THE COURT: That's fair.

23 ATTORNEY KRATZ: I ask that -- that

24 be --

25 THE COURT: Sure. It's a fair objection.

1 It's sustained. Why don't you rephrase the
2 question, Counsel?

3 Q (By Attorney Fremgen) How often did you testify
4 before a judge in regards to this type of topic?

5 A Before a judge, that I can recall of those five to
6 ten times, uh twice.

7 Q How often have you testified --

8 A Three -- three times. I'm sorry.

9 Q How often have you testified in this same regard
10 in front of a jury?

11 A This is the first time.

12 Q Now, you had a -- a large number of cases that
13 you've test -- you indicated you testified before
14 a court in the past?

15 A That's true.

16 Q And this seems like a very small fraction; is
17 that correct?

18 A That's true.

19 Q Why is it that you have such a smaller fraction
20 in this type of, uh, evaluation, or forensic
21 psychology versus the other types that you
22 testified about?

23 A Well, it's just an expansion -- a gradual expansion
24 of my practice. I mean, when I first started doing
25 this, as I indicated, I only did mental commitment

1 evaluations and guardianship. And, then, I began to
2 do maybe a -- a few custody evaluations, and, uh,
3 fitness to stand trial or, uh, proceedings regarding
4 disposition of cases regarding children or -- or
5 sentencing.

6 And, then, it just -- with the seminars
7 I -- I attended, with presentations I've given
8 that required me to learn the material to present
9 in a meaningful way to attorneys, then I
10 gradually expanded my areas of expertise. Not --
11 not -- not to the point -- I'm not a
12 neuropsychologist, for example, so I -- there's
13 no way I'm going to expand to the point of
14 talking about traumatic brain injury from a car
15 accident, and get up here and try to help the
16 Court. I mean, there's certain limitations.

17 Q When you began your practice in, um, psychology,
18 uh, was there sex offender groups at that time
19 that you were aware?

20 A Not that I was aware of.

21 Q And, now, you testified earlier that one, uh,
22 function of your, um, employment is you are a
23 facilitator in sex offender groups?

24 A I'm proud to say that I get to continue that by web
25 cam on a weekly basis for the three groups I already

1 run once I get to St. Louis. So, yes.

2 Q So that's something that's kind of progressed
3 throughout your career?

4 A Even that has progressed to web cam. That's true.

5 Q But the sex offender type of -- of involvement in
6 your field?

7 A I started off with six individuals that were in a
8 group, and, now, I've seen three thousand.

9 Q Your -- would it be fair to state that your
10 involvement in suggestibility evaluations is
11 similar? That is, it's begin -- it's just
12 beginning, and it's beginning to progress?

13 A It's just beginning. Beginning to progress. But
14 whether expands to the degree -- I doubt it will
15 expand to the degree that my sex offender work has,
16 because I'm 56 and don't have that many years to have
17 it expand. You know.

18 Q Specifically, turning to Brendan Dassey, you're
19 familiar with Brendan; correct?

20 A I am.

21 Q And how did you become familiar, first, with
22 Brendan Dassey?

23 A You contacted my office.

24 Q Did you have an opportunity to review collateral
25 materials in preparation for meeting with

1 Brendan?

2 A I did.

3 Q Can you describe what those materials were?

4 A Uh, it -- it was, uh, sheriff, uh, transcript
5 regarding his, uh, being interrogated. And I also
6 viewed the actual video of -- of those -- some
7 individuals call them interviews when they're
8 victims, interrogations when they're suspects. Uh, I
9 viewed that as well. And I, subsequently, reviewed,
10 after my report was prepared, uh, school records
11 regarding, uh, Mr. Dassey, Brendan, that date back at
12 least to fourth grade. If not, before.

13 ATTORNEY KRATZ: Judge, if I may, and I
14 don't mean to -- I don't mean to interpose an
15 objection, but when he indicates reviewing
16 videotapes, if he could explain the dates of those
17 interview videotapes so that we know what interview
18 he was talking about, that might be helpful for us
19 as well.

20 THE COURT: That's fair. If you're going
21 to be alluding to materials that are dated,
22 Dr. Gordon, why don't you, as part of your answer,
23 reference the date.

24 A Yes, sir.

25 THE COURT: Okay.

1 THE WITNESS: Do you want me to do that
2 now?

3 THE COURT: Go ahead.

4 THE WITNESS: The, uh, written narrative
5 was based on inter -- an interview that took
6 place on February 27, 2006. I may have reviewed
7 another one as well. I don't recall. But I know
8 one was based on an interview of -- or
9 interrogation of February 27, 2006 -- 2006.

10 Q Did you have an opportunity to review a DVD of a
11 videotaped statement on March 1, 2006?

12 A Yes.

13 Q And you indicated you'd also reviewed a number of
14 school records as well; correct?

15 A I sure did.

16 Q And at one point were you provided with tran --
17 or a -- copies of a CD involving phone calls from
18 the jail?

19 A I was.

20 Q Before you conducted any -- well, let me ask you
21 this: Did you conduct any tests on Brendan
22 Dassey?

23 A Yes.

24 Q Now, before you conducted those tests, did you
25 also perform a mental status examination of

1 Brendan Dassey?

2 A I did.

3 Q Why is it important to do a mental status
4 evaluation of a, uh, individual?

5 A Well, it's important because it's -- it's important
6 because it's advisable to obtain a variety of sources
7 of clinical information, both collateral, as well as
8 testing, as well as interview, in order to conduct a
9 comprehensive evaluation to com -- in order to come
10 up with the most reliable and valid conclusion as
11 possible.

12 Q What observations, if any, did you have following
13 your mental status evaluation of Brendan Dassey?

14 A Uh, Brendan Dassey's thought process was slow. He
15 was -- there was, even in the interview, indication
16 of mild to moderate mental impairment. He was slow
17 to respond. His eye contact was poor. His affect
18 was bland. To put that -- his affect was blah. To
19 put it unprofessionally.

20 He, uh -- there was -- a mental status
21 evaluation also often includes a -- a history. A
22 social history. And he has a history of -- of,
23 uh, learning problems, as I noted, per his
24 report, confirmed by collateral data.

25 He also talked to me about feeling very

1 anxious and a loner in school, having few
2 friends, and feeling anxious, for example, when
3 getting up to talk before a class, uh, he felt
4 very socially phobic and, uh, uncomfortable, and
5 alienated from friends.

6 Q Is the information that you, um, obtained through
7 the mental status examination important, uh, to
8 consider, as a forensic psychologist, prior to or
9 during the time that you perform additional
10 tests?

11 A It's important to consider it prior to or during the
12 administration of additional tests, because I have,
13 at my office, for example, 150 tests, and you want to
14 tailor-make the evaluation, to use tests that most
15 directly address a given case.

16 I mean, there's some tests that I would
17 always use in a suggestibility evaluation. Such
18 as Gudjonsson, for example. But there might be
19 others that I would include, depending on the
20 interview and the initial results of the initial
21 testing. And, then, I might add others as well.

22 Q So, would it be fair to state that, for instance,
23 a person, um, uh -- if, after you interviewed the
24 person, and they appeared to be of average or
25 below average intelligence, you may not need to

1 use tests that want to examine them for profound
2 mental retardation?

3 A Well, if they had average intelligence, I would -- I
4 might confirm it with a -- I might have confirmed it
5 with abbreviated IQ testing. If it was a person who
6 was profoundly mentally retarded, they wouldn't have
7 the capability of formulating attempt to commit a
8 crime, and they would be in an institution, having
9 their own personal daily needs taken care of. So,
10 if --

11 Q So you're not going to have somebody who's
12 profoundly mentally retarded, for instance,
13 complete the evaluations or probably read at a
14 significant level?

15 A Well, they won't -- they won't even be charged with a
16 crime.

17 Q Uh, just in, Doctor -- in regards to your
18 evaluation, Doctor, you wouldn't provide those
19 type of tests that don't fit -- appear to fit the
20 personality of the individual you're examining?

21 A True.

22 Q Okay. Can you briefly describe what tests you
23 did conduct in regards to your evaluation of
24 Brendan Dassey?

25 A Yes. The one, uh -- do you want me to talk about the

1 Gudjonsson Suggestibility Scale?

2 Q However you wish to start. Did -- did -- do you
3 want to go chronologically with the tests that
4 you performed?

5 A I have a list of them right here. I'm going to go
6 straight from the top to the bottom, if that's okay?

7 Q That's fine.

8 A Uh, one is the Minnesota Multiphasic Personality
9 Inventory, adolescent version. It's based on a
10 der -- uh, derivation. It's -- it was altered and
11 normed with thousands of subjects, uh, from the
12 Minnesota Multiphasic Personality Inventory, which
13 had originally came out in the 1930's by Starke and
14 Hathaway, psychiatrists and psychologists,
15 respectively, from the University of Minnesota.

16 It was subsequently revised as the
17 MMPI-2, because they needed a more representative
18 cross-section of individuals who, uh, represent
19 the United States population, and they changed
20 some, uh, given questions, and they re-normed it.

21 And, then, at the same time, uh,
22 James Butcher, uh, who did -- was instrumental on
23 that, as well as Robert Archer, two
24 psychologists, uh, came up with the MMPI-A, which
25 is the most widely used and researched objective

1 test of adolescent emotional problems. It has
2 many specific scales on it that one can review to
3 form conclusions.

4 Q Why did you choose this test, for instance, in
5 your evaluation of Brendan Dassey?

6 A One is because it's so well-respected and well-
7 researched. Secondly, it -- it comes -- it has
8 scales on it that relate to suggestibility. Such as,
9 uh, passivity, social avoidance, social alienation,
10 uh, anxiety. Uh -- or, in contrast, those that
11 aren't indicative of suggestibility, which would be
12 the absence of those, but, instead, it would be a
13 person that's assertive, or aggressive, or even that
14 would -- those factors could be evaluated from the
15 MMPI.

16 Q How many questions are involved in the -- in the
17 MMPI?

18 A I was supposed to look that up, wasn't I? I -- I
19 believe 566 or 567.

20 Q And -- and how do you assess the answers?

21 A But it might be -- I'm sorry to interrupt. It -- it
22 might be shorter on the MMPI. I might be talking
23 about the MMPI-2 with my prior answer.

24 Q Do -- do you recall how many questions you asked
25 of Brendan when you performed the MMPI-A?

1 A I administered the entire test. So, it was at least,
2 uh, 450 questions long or more.

3 ATTORNEY KRATZ: Judge, I'll stipulate
4 it's 478 questions.

5 THE WITNESS: Thank you, sir.

6 THE COURT: All right.

7 Q (By Attorney Fremgen) And how do you go about
8 assessing the answers that the individual, for
9 instance, in this case, Brendan, provided to you?

10 A Well, I used the true/false questions and see which
11 items, per scale, were scored in a given direction
12 which would cause a scale, such as depression, or
13 anxiety or social introversion, to be lower or
14 higher. And then I put it on a graph.

15 I also used the validity scale scores
16 to, um, ascertain whether the profile is valid.
17 Whether it's accurate in terms of prescript -- in
18 terms of describing a person's personality.

19 Q In regards to assessing the test, then, would you
20 base your opinion on, let's say, any one answer
21 of the 478 questions or a small number of
22 answers?

23 A Absolutely not.

24 Q Why not?

25 A Well, the test is constructed so that one looks at

1 scales, not at individual answers, because, taken out
2 of context, a person's true or false answer to a
3 given question could -- or provide, uh, confusing
4 results, and it's just -- it's not proper protocol.
5 It's not the way that -- that we're instructed to do
6 that as psychologists, uh, to -- in order to render
7 reliable conclusions.

8 Q I'm going to place on the screen Exhibit 229. In
9 performing the MMPI, were you able to obtain
10 results to the tests provided to Brendan?

11 A Yes.

12 Q And what were those results?

13 A Well, the results -- there are approx -- there are
14 probably -- there are ten basic clinical scales, but
15 there are probably 100 or 50 supplemental scales that
16 can be interpreted. All were within the average
17 range, including the validity scale, showing that the
18 profile was valid.

19 All were in the average range except for
20 four, and those were the ones that you see on
21 that screen.

22 Q Can you, uh -- I believe you have a pointer.

23 A I don't want to blind anybody here. Okay.

24 Q And, so I'm clear, you were able to assess
25 Brendan on a number of topics and found him to be

1 average in many of those -- those areas?

2 A I assessed him on a number of scales, and all of them

3 were in the -- within the average range except for

4 four.

5 Q And -- and these are the four here?

6 A Yes, sir.

7 Q Why were these four, in particular, um, important

8 to note in regards to your evaluation of Brendan?

9 A Well, I'll point out the one that was not

10 hypochondri -- hypochondriasis. That's not

11 particularly related to suggestibility.

12 Q Why did you include that on this --

13 A I just wanted to be straight forward and honest

14 and -- and say the scores that were high. I didn't

15 want to leave any out.

16 Q What -- what is hypochondriasis?

17 A It's, uh, either a person that has significant -- has

18 a person's -- who has significant concern about

19 bodily functioning, health, and, sometimes, it can be

20 because they have bona fide, real health concerns.

21 Cancer, migraine headaches, or whatever. Or it can

22 be that they don't have physical symptoms, but they

23 have a concern with their health anyway, or

24 stress-related symptoms, and, then, that score would

25 be elevated in those cases.

1 Q So even though this doesn't have any, uh, um,
2 relevance to the issue of suggestibility, you
3 included it, uh, because it was in the top four
4 of the high scores?

5 A I present information that is un -- that's abnormal.

6 Q Okay. Can -- can you then go through the other
7 three? I'm going -- going to -- I don't want to
8 put words in your mouth, Doctor, but were these
9 the three that you felt were important in
10 consideration of the suggestibility issue?

11 A Yes.

12 Q Okay. Can you, uh, go through your results,
13 first with, I guess, the top?

14 A The top one is social avoidance. The T-score was 72.
15 It's easier to explain the percentile of one.

16 Q What -- first of all, if you can, can you
17 describe what is per -- percentile and what is
18 the significance of percentile?

19 A I can. Out of 100 individuals who would have taken
20 that test, 99 out of a hundred would have scored in a
21 more normal range than did Brendan.

22 Q And, so, for instance, on the social avoidance,
23 99 would have scored at a more normal range? And
24 of social avoidance or of being --

25 A Social --

1 Q -- socially --
2 A -- avoidance.
3 Q Okay. What is the significance in -- in regards
4 to that in your assess -- assessment of
5 suggestibility?
6 A Individuals who have social problems, who are
7 passive, who are withdrawn, have a greater likelihood
8 of being suggestible.
9 Q What -- what's the next category that you looked
10 at with the MMPI-A?
11 A Well, I'd like to skip down, if I could, please, to
12 social introversion. Uh, the reason being, that
13 social introversion is a separate scale from social
14 avoidance, and you rely on different questions that
15 go into those scales from the MMPI-A, but they're
16 still, basically, evaluating the same thing. Social
17 withdrawal, social avoidance. And on that particular
18 one, for social introversion, his percentile was 2.3.
19 In other words, uh, roughly, uh, 97
20 people -- 97 adolescents out of 100 would have
21 scored in a norm -- more normal fashion. A lower
22 fashion than he on that scale.
23 Q So he is more socially introverted than 97
24 others; is that correct?
25 A Accor -- according to this scale, yes.

1 Q And, then, there was one other scale that you
2 looked at?

3 A Yes. And that's social alienation. And social
4 alienation, his score was 1.5 percentile. Again, uh,
5 98 1/2, if we could call half -- 98 1/2 individuals
6 would score on a more normal range on that scale than
7 did Brendan.

8 Social alienation is different than the
9 other two, because a person who is socially
10 avoidant and socially introverted would tend to
11 be socially alienated. They would be cut off
12 from those with whom they interact and avoided by
13 those with whom they interact, because they don't
14 reach out, and they -- and so they're -- they're
15 just alienated from -- from people who could be,
16 otherwise, friends, or they -- they live, not
17 psychotically, but they live in their own world,
18 alienated from society, so to speak.

19 Q These scales, these terms, are these your terms
20 or are these terms that you receive from the
21 tests?

22 A They're straight from the MMPI manual, and the, uh,
23 from the manual and scales from the MMPI.

24 Q The test preparers?

25 A The test preparers.

1 Q What -- what other tests did you, uh, administer
2 for Brendan, or to Brendan?

3 A Well, I think I'll -- I'm sorry. I think I'll skip
4 the suggestibility scale and I'll skip down to the
5 16-PF. The 16-PF was developed 15 years ago at the
6 University of Illinois by a psychologist by the name
7 of Dr. Raymond Cattell.

8 He did what a -- what's known as factor
9 analysis. He put down a number of normal
10 questions that would -- that would measure normal
11 traits of normal individuals, and then he did a
12 statistical procedure to pull out similarities of
13 those items. And he found 16 factors, um, and
14 one global factor. So, one, the global factor,
15 overall factors, the accommodation, independence.

16 The other two on the exhibit there, shy
17 and deferential versus socially bold and
18 dominant, are factors -- one of the -- two of the
19 16 factors contained on the instrument that
20 measures normal personality traits.

21 Q How does this test assist you in, uh, developing
22 an opinion or determining whether someone might
23 be vulnerable to suggestion?

24 A Review of research shows that individuals who are
25 accommodating, that is, dependent, shy, differential,

1 more passive, have a greater chance of being --
2 substan -- depending on the degree that it's shown,
3 is substantially greater chance of being suggestible.

4 And that comes from research, and, also,
5 uh, my training, and the books that I've
6 reviewed, and the research I've done online,
7 suggest the very use of this test showed this,
8 and to review the outcome on these three
9 particular scales.

10 Q What, uh, results did you obtain from this test
11 in regards to Brendan?

12 A Well, unfortunately, I don't have, and wasn't able to
13 easily obtain, the percentile. So, all I can do is
14 show to the jury that for accommodation, he's on the
15 lower end of the scale. Not every one, but, still,
16 the lower end of the scale on accommodation, the
17 lower end of the scale on shy, and the over -- the
18 lower end of the scale for being deferential, or
19 passive, which are all consistent with each other and
20 are consistent, by the way, with the MMPI results.

21 Q What other tests did you perform in regards to --
22 to Brendan?

23 A I performed, also, the, uh, State Trait Expression,
24 uh, beg your pardon. The State Trait Anger
25 Expression Inventory, which is an objective test that

1 measures normal and abnormal ways of expressing
2 anger.

3 Q Why did you choose that test to conduct in
4 regards to -- to this evaluation of Brendan?

5 A Well, I wanted to see if he was angry. If a person
6 is angry and dominant, then they tend to not be
7 suggestible. If they -- if the score shows that
8 they're passive, and deal with their anger by keeping
9 it to themselves, or not really being angry very
10 often, then that would, again, be related to -- to
11 suggestibility.

12 Q What results, if any, did you determine in
13 regards to this test as it applied to Brendan?

14 A The test scores showed that he is passive and, uh,
15 subdued.

16 Q Before I go to the next test, you -- let me go
17 back to the 16-PF, and, I suppose, possibly, in
18 regards to the State Trait Anger Expression
19 Inventory -- um, you -- at the end of your -- as
20 you were finishing test -- testifying as to the
21 16-PF, you said that it's also important to
22 consider this test as a way to validate the MMPI
23 to see if it's consistent; is that correct?

24 A It's important to synthesize all of the different
25 tests into one conclusion and consider all of them,

1 yes.

2 Q So, let me ask you this, hypothetically; if, for
3 instance, you had performed four tests, and three
4 seemed to be consistent, but one seemed to be
5 well away from what you've seen thus far, would
6 that offer you some concern in the tests --
7 testing of the individual?

8 A It would not -- it would cause me concern on how to
9 most accurately synth -- put together those results
10 into a -- an opinion.

11 Q So it had an impact on your final opinion?

12 A It would. Absolutely.

13 Q Want to pull the mike a little closer?

14 A Absolutely.

15 Q Sorry for interrupting you. Let's go -- we'll go
16 to the next set of tests that you performed?

17 A Yes.

18 Q And what was that?

19 A Well, I performed two, uh, IQ tests. One is the
20 Wechsler Abbreviated Scale of Intelligence. And it
21 originally came from David Wechsler, uh, in 1932, at
22 the -- in a Bellevue clinic, and it was called the
23 Wechsler-Bellevue Intelligence Test established in
24 1939.

25 Um, since then, it's been revised and

1 abbreviated as well. And the Wechsler
2 Abbreviated Scale of Intelligence, uh, reliably
3 assesses intellectual functioning, IQ, of adults
4 and children.

5 Q Now, I have on the screen Exhibit 228. Does that
6 indicate, uh, results of those two intelligence
7 quotient tests?

8 A I don't know if the jury can read it, so I -- I would
9 need to read it, I believe, without blinding the
10 court reporter.

11 Q How's that?

12 A That's good. Now, to explain the top part, if you'd
13 like me to --

14 Q Please.

15 A It shows an average IQ is 100. That's why 50 people
16 out of a hundred would score higher -- who obtain a
17 score of higher of a hundred and 50 would score lower
18 than a hundred.

19 Then, from 90 down to 70, or, actually,
20 from 90 down to 84, is the low average range of
21 intelligence. From 70 --

22 ATTORNEY KRATZ: Judge, if I may, on what
23 scale is he referring to? That 90 to 84 is low
24 average. If he's talking about Wechsler or Kaufman,
25 I'd like him to -- to state that.

1 THE COURT: All right. Can you identify
2 which of the -- the tests, uh, reflect those
3 scores?

4 THE WITNESS: The Kaufman has an IQ
5 score of 83, which is not a test that I described
6 yet, but it's comparable to the Wechsler
7 Abbreviated Scale of Intelligence.

8 Q (By Attorney Fremgen) Doctor, I'm sorry to
9 interrupt you. I think the question by the
10 prosecutor, the objection, was, is the base used
11 to evaluate the actual results the same on the
12 Wechsler and Kaufman? That is, is the base of
13 what is average 100, what is below average, what
14 you've said was 90 to 84, and probably the other
15 numbers on the scale, the same scale used in
16 completing a base for the purposes of
17 interpreting the results in both the Kaufman and
18 the Wechsler?

19 A Yes.

20 Q Okay. Now, if you could continue -- I'm sorry to
21 interrupt you -- in regards to what the, uh,
22 actual results were with Brendan and how they
23 compare to the base -- base scale?

24 ATTORNEY KRATZ: Judge, if -- if I may just
25 sharpen my -- my point, I wanted to make sure that

1 this doctor was saying that, on the Wechsler Scale,
2 90 to 84 is considered below average. I think
3 that's what he said. And I want to make sure that
4 was, in fact, your testimony.

5 THE WITNESS: My testimony is, based on
6 the diagnostic and statistical manual of mental
7 disorders, which shows that individuals who have
8 IQ's of 84 -- 70 to 84 -- is one facet of
9 diagnosing a mental -- uh, borderline mental
10 intelligence. On the other hand, according to
11 Wechsler norms, a score of 70 to 80 is in the
12 borderline range.

13 ATTORNEY KRATZ: If I may, then, Judge, I
14 am going to object as -- as irrelevant. If he's
15 saying the Wechsler Scale goes all the way down to
16 80 for low average, doesn't go to 84, and that's
17 what this chart says, that would, uh -- would --
18 would be irrelevant. If he's using some other thing
19 to score it with, like the DSM-4, which I now heard,
20 uh, that's something other than this chart purports.
21 And I would interpose an objection.

22 THE COURT: Mr. Fremgen?

23 ATTORNEY FREMGEN: Well, I can ask the
24 doctor some more foundation questions as to the
25 chart, itself, that he created.

1 THE COURT: I -- I think we're going to
2 have to do that. And I'll rule -- I'll -- I'll
3 withhold ruling on the objection.

4 ATTORNEY KRATZ: Thank you, Judge.

5 Q (By Attorney Fremgen) Doctor, you -- you
6 provided this, um -- a chart that was used to
7 make the Exhibit 228; correct?

8 A Yes.

9 Q And you included both the Wechsler and the
10 Kaufman intelligence quotient on results and the
11 tests on the one chart; correct?

12 A Correct.

13 Q Why is it that they're both combined? Or why is
14 it you felt necessary to combine both to one
15 exhibit?

16 A To make it simpler to understand, and be -- and I
17 used the Wechsler -- I mean, I used the DSM-4, uh,
18 norms, simply because that's what's commonly used,
19 and if I would not use those, individuals would be
20 asking me why I didn't use those, because in every
21 mental status and psychiatric report under the, uh --
22 that comes out for clinical and forensic reasons,
23 they ask precisely what a person's diagnosis is on
24 the DSM-4.

25 Q Well, again, if we can set aside DSM-4 for just a

1 moment --

2 A I'm sorry.

3 Q -- specifically, regards to Wechsler and Kaufman,

4 is there a base scale under the Kaufman

5 Intelligence Test?

6 A No.

7 Q Is there a base scale from the Wechsler?

8 A You mean base scale on how to divide it into

9 categories?

10 Q Correct.

11 A Uh, yes.

12 Q Okay. Under Kaufman?

13 A No.

14 Q Just on Wechsler?

15 A Yes.

16 Q So -- so this scale, then, is actually the

17 Wechsler?

18 A This -- the scores are from the Wechsler and Kaufman.

19 Q No. I'm sorry, Doctor. The scale, not the

20 score.

21 A Oh, I'm sorry.

22 Q It's this document, here, where it says IQ

23 percentile, is this actually the Wechsler?

24 A No.

25 ATTORNEY KRATZ: Renew my objection, Judge.

1 ATTORNEY FREMGEN: Is it --

2 THE COURT: I understand. Hold on a second
3 here. This is going to get terribly confusing
4 unless the witness can segregate, one, what's on
5 this test. What -- what -- what -- or, excuse me.
6 What's on the exhibit in the graphic portion of the
7 exhibit? What that reflects. And, two, if that's
8 different than -- than Wechsler test as it appears
9 to --

10 ATTORNEY FREMGEN: I understand, Judge.

11 THE COURT: -- be, uh, that -- that he,
12 then, explains that as well. Now, can he do that?

13 ATTORNEY FREMGEN: I'm going to ask the
14 doctor that.

15 THE COURT: All right. Go ahead.

16 Q (By Attorney Fremgen) Doctor, can you
17 distinguish the two? The Wechsler versus the
18 Kaufman?

19 A Yes.

20 Q And without using the exhibit, Doctor, did you
21 have -- come to any conclusions with regards to
22 the evaluation of Brendan pertaining to the
23 Wechsler Intelligence Test?

24 A It's my conclusion that he is in the borderline range
25 of intelligence.

1 Q What score did he -- do you recall what score he,
2 um, you -- you calculated in regards to that
3 test?

4 A Which one again?

5 Q Kaufman?

6 A Kaufman was 83.

7 Q And you indicated that's in the average or below
8 average scale?

9 A That's in the borderline range.

10 Q Borderline.

11 A According to --

12 Q Can you describe what borderline means?

13 ATTORNEY KRATZ: Again, Judge, borderline
14 from what scale? I -- I have to ask.

15 ATTORNEY FREMGEN: The question was in
16 regards to Wechsler. And if the prosecutor would
17 listen to the answer, he would have heard him say
18 that scale.

19 ATTORNEY KRATZ: We'll -- we'll hear if
20 it's the Wechsler Scale. Go ahead, Doctor.

21 THE WITNESS: I misspoke. According to
22 the Wechsler Scale, it's in the low average
23 range. The lower end of the low average range.

24 Q What significance does that have, being in the
25 lower average range?

1 A It means -- well, since he's in the lower end of the
2 low average range, the significance means that he has
3 problems as shown in his school records with, uh --
4 and his need for special education, his problems
5 with, uh, learning, problems with concentration,
6 problems with -- with functioning at an intellectual
7 level that's -- that's in the average range.

8 Q What is the percentile? Is there -- or,
9 should -- I should ask you, is there a percentile
10 associated with the score Brendan received on the
11 Wechsler test?

12 A There may be. I don't have it written down. I think
13 it may have been on the chart that you took off the
14 screen. I know it was there. I don't have that
15 written down.

16 Q Do you have any, uh, notes with you as to those
17 results?

18 A No. Well, I may. I may.

19 Q Doctor, did you --

20 A I -- I do.

21 Q Okay.

22 A I do. And that's at the, uh, 10th percentile.

23 Q What significance does the percentile have? Or
24 how -- how can you -- can you describe what that
25 significance is in regards to, uh, evaluating the

1 intelligence test results pertaining to Brendan?

2 A On the Wechsler Abbreviated Scale -- Scale of
3 Intelligence, 90 people out of a hundred -- 90
4 adolescents in -- in his own age group -- would have
5 performed intellectually better than he.

6 Q Now, I'm going to ask you in regards to the
7 Kaufman test.

8 A Yes, sir.

9 Q And, again, these are both, for lack of a better
10 term, an IQ test?

11 A True.

12 Q In regards to the Kaufman test, what, uh, results
13 did you, uh, formulate, uh, when you provided the
14 test to Brendan?

15 A He had a composite, an overall IQ compound score,
16 overall IQ score, of 83, which is at the 13th
17 percentile.

18 Q And, again, what significance does that
19 percentile have in your, uh, evaluation of
20 Brendan?

21 A It shows that, uh, he has intellectual shortcomings
22 to the point that 87 adolescents his age would have
23 performed better on that test than he did.

24 Q Why perform two intelligence tests on Brendan?

25 A I, uh -- this is an important case. I wanted to be

1 thorough. I wanted to do it right.

2 Q Were the two results consistent?

3 A Yes.

4 Q What I mean by that, I suppose, be more specific,
5 consistent with each other?

6 A True.

7 Q And, previously, you mentioned you were
8 performing a number of tests in order to
9 determine, for one, whether or not your results
10 were consistent throughout the tests. Was this
11 test results consistent with other observations
12 you, um, uh, or the other observations from the
13 other tests?

14 A Not necessarily. Uh, I could say that a individual
15 with lower IQ might be more likely to be more
16 passive, more uninvolved. But, sometimes,
17 individuals with lower IQ don't want to be
18 embarrassed about their low IQ and act out, uh, and
19 cause trouble so that they -- their low IQ isn't seen
20 to others, and so they're not exposed. So I really
21 can't say it's related.

22 Q So, now, you're not saying, then, that a person
23 with low IQ is necessarily suggestible; correct?

24 A Sometimes. Within extremely low IQ score, they --
25 that could be a very significant factor. Uh, but

1 you're -- but, usually, uh, I -- a person would still
2 administer an entire battery.

3 Q So one test, in and of itself, wouldn't be enough
4 for you to make an opinion on whether a person is
5 vulnerable to suggestion?

6 A It wouldn't be enough for me. And I don't think it
7 would be enough for the majority of forensic
8 psychologists who are experienced in assisting the
9 court and juries.

10 Q Would the IQ test, in and of itself, be enough
11 for you in making that determination?

12 A In this case?

13 Q Yes.

14 A No.

15 Q Did you perform any other tests in relation to
16 your evaluation of Brendan Dassey?

17 A Yes, I did.

18 Q And what test was that?

19 A That was the Gudjonsson Suggestibility Scales. The
20 reason it's plural is there are two scales -- two
21 scales that haven't been normed to the degree that
22 they're helpful in this particular kind of hearing.

23 Two have been normed to the point where
24 they're alternate forms. So you could give one
25 form to a person one week, and another form to a

1 person another week, and -- and they -- they're
2 just alternate forms and we'll get the same
3 results.

4 Q Can you briefly describe this test?

5 A Yes. It was constructed, like I said, uh, by Gisli
6 Gudjonsson in the early 80's to deal with
7 interrogative suggestibility. Uh, rather than define
8 that, which is a lot of words, and I don't think it
9 would be that helpful, I -- I would just say that
10 there are two aspects of interrogative
11 suggestibility. Uh, suggestibility when a person is
12 being interrogated. And that's what it assesses.

13 And there are two aspects. One is yield
14 and one is shift.

15 Q Could you describe, or define, what is "yield" in
16 the Gudjonsson Suggestible Scale?

17 A Yield is when a person answers in a -- provides a
18 response to a leading question. Even respond --
19 provides a response to a leading question which is
20 not facts that have been presented to them. They
21 haven't -- they don't know about that. Or they're --
22 it's an incorrect statement.

23 Q What is "shift" under the Gudjonsson --
24 Gudjonsson Suggestibility Scale?

25 A Well, shift -- the -- the individual is -- is read

1 a -- is presented as a memory test, and they're read
2 a crime scene. And, then, they're asked to repeat
3 it.

4 Then, later on, it could be immediately
5 or later on, up to half hour, 45 minutes, you ask
6 the questions again. Or you ask questions based
7 on that -- on the story. And you see whether
8 they answer in a, yes, fashion to leading
9 questions.

10 Then, after that is done, then you exert
11 mild pressure, or mild criticism to them by
12 saying -- I could pull out the exact --

13 Q No, that's okay. If you can just recall from
14 your memory?

15 A But it's something to the point where, um, subject,
16 uh, you have, uh, made a number of errors. I know
17 you can do better. I need you to think about this
18 more carefully. And I'm going to ask you the same
19 questions and I want you to do better this time.

20 And, then, the shift is the degree to --
21 the number of times that a person changes their
22 answer from the first question -- time they're
23 questioned to the second time they're questioned
24 with the very same questions.

25 Q Now, I have on the screen, Exhibit 230. Is this

1 the results that you received when you performed
2 the Gudjonsson Suggestibility Scale on Brendan?

3 A Yes.

4 Q And if you could just -- you've already defined
5 shift and yield. If you could indicate the
6 significance of the other three, um, categories;
7 "score", "percentile", and "average"?

8 A Sure. On the yield, which should be at the -- it's
9 the first set of 25 questions that are asked. Five
10 questions are related. They're just neutral
11 questions. So they're -- on the -- but on the yield,
12 15 questions are yield questions. And he answered in
13 a yielding fashion, in terms of leading questions, 7
14 times.

15 On the shift, he changed his answers 9
16 times out of 20 potential questions.

17 And, then, the average individual taking
18 the test would shift -- would yield to leading
19 questions 4 times out of 15, and 2 times they
20 would change their answers when they were read
21 the questions again, 2 times out of 20 of the
22 questions that are designed to measure that.

23 Uh, so the difference here is 2 and 9
24 and 4 and 7, resulting in a percentile score that
25 individuals taking that test, only three out of

1 100 would shift their answers more than Brendan
2 did. And only 20 out of 100 would yield their
3 questions. To give in and go along with leading
4 questions more than Brendan.

5 So, he had a greater tendency to shift
6 his answers due to pressure than he did, simply,
7 answer them when there were leading questions
8 without pressure.

9 The way you get the total score, is you
10 add up the shift and the yield to get a total
11 score of 16. And, so, the average person would
12 get a score of 7, and the percentile for the
13 total of these two, for the total score, would be
14 95. Five people out of one hundred would obtain
15 more yielding and shifting responses than did he.
16 Ninety-five would not.

17 Q Was this the last test that you performed or
18 conducted on Brendan in regards to your
19 evaluation as to whether he was vulnerable to
20 suggestion?

21 A Yes.

22 Q And, based upon these results and the mental
23 status, uh, examination, as well as other
24 collateral information, were you able to reach,
25 uh, an opinion as to whether or not Brendan is,

1 uh, a person who is vulnerable to suggestion?

2 A Yes.

3 Q Is that opinion to a reasonable degree of
4 psychological certainty?

5 A Yes.

6 Q And what is that opinion you have?

7 A It's my opinion that -- that he's highly suggestible,
8 uh, when being interrogated, in responding to leading
9 questions or pressure, mild pressure, if that, in
10 fact, is present.

11 Q Is that based -- your opinion based solely on the
12 Gudjonsson Suggestibility Scale or a combination
13 of the other tests, the series of tests, that you
14 performed on Brendan?

15 A It's based on my knowledge of the research, based on
16 the -- the, uh, collateral data that we've talked
17 about. It's based on all of the personality tests
18 that I used, and IQ tests that I used, and it's also
19 based on the Gudjonsson Scale.

20 Q Would it be -- as a forensic psychologist, would
21 it be appropriate to consider just one test that
22 was performed in isolation from the others?

23 A It would not be recommended practice. Even if a
24 person had a substantially low IQ. Like I said at
25 the very beginning of my testimony, this is -- these

1 are important matters that I testify before, and
2 forensic psychologists testify about, and -- and to
3 not do a thorough job and not to do anything less
4 than that wouldn't be -- wouldn't be right, both
5 ethically and by my own standards.

6 Q You had indicated before that you've, uh,
7 performed similar evaluations on approximately
8 five -- in approximately five other instances?

9 A At least that, yes.

10 Q Did you perform the exact same tests in each
11 circumstance?

12 A No.

13 Q So some of the tests performed on Brendan you may
14 have not -- you may not have used on others?

15 A Either because I did not possess them or because I
16 acquired further information from seminars and -- and
17 from my review of the literature that indicated that
18 other tests might be more helpful to use as well.

19 Q Is the Gudjon -- Gudjonsson Suggestibility Scale
20 consistent within your evaluations?

21 A I did not use it on one -- at least one that I can
22 think of. I -- I didn't have it at that point.
23 It -- it was difficult to obtain. You ord -- you
24 have to order it through New York and submit your
25 credentials, via internet, to the -- to London, and

1 it's -- it's a unwielding process. But, finally, I
2 did succeed. It took me about a year to get the test
3 once I decided I wanted it. It should be made
4 much -- I shouldn't give an editorial.

5 Q In reaching your conclusion, your opinion, were
6 there any other factors that you considered, um,
7 more probative than other factors in assessing
8 Brendan's vulnerability to suggestion?

9 A No.

10 Q What --

11 A Not in this case.

12 Q Let me clarify your answer as -- would it be
13 consistent, then, that you consider all factors
14 probative?

15 A Uh, yes. And I -- I wouldn't be able to assign a
16 percentage.

17 Q Do you recall what factors that you considered
18 when you, uh, um, reached your conclusion as to
19 Brendan's, uh level of vulnerability to
20 suggestion?

21 A I considered all that I testified to, plus it -- the
22 way in which the police asked -- the detective asked
23 the questions, and, uh that's pretty much it.

24 Q Now --

25 A The length of time he was in custody. The -- the

1 soft room that he was in that made him more relaxed
2 and comfortable to talk. Uh --

3 Q Let me ask you this: Are those factors that, in
4 the research by Gudjonsson, is something to
5 consider when assessing a person's, uh,
6 vulnerability to suggestion?

7 A Yes.

8 Q And you touched upon a few. In fact, when I
9 asked you to elaborate, you touched upon what I
10 believe Gudjonsson refers to as circumstances of
11 custody. Do you recall that? Touched upon
12 duration and --

13 A Sure.

14 Q Why did -- well, what significance does duration
15 of custody have in assessing an individual's, uh,
16 uh, level of susceptibility to suggestion?

17 A The longer they're in custody, the more anxious they
18 probably become, the more fatigued they become, and
19 the more susceptible they become to offering a
20 confession, whether it be false or true. Just to
21 offering a confession when they otherwise might not
22 have.

23 Q Are you familiar with the length of custody in
24 regards to Brendan in -- in -- in regards to the
25 statement made on May -- March 1, 2006?

1 ATTORNEY KRATZ: Judge, if I may interpose
2 an objection. I think "custody" is a legal term.
3 If that could be expressed in some other way, I'd
4 appreciate that.

5 THE COURT: Well --

6 ATTORNEY FREMGEN: That's fine. I'll
7 rephrase -- I'll rephrase. That's fine, Judge.

8 Q (By Attorney Fremgen) The duration of the
9 interview process, would that -- you understand
10 what I'm asking you, Doctor?

11 A Yes.

12 Q How long he was there with the officers?

13 A I believe it was in the neighborhood of four hours on
14 at least one occasion.

15 Q But, approximately, you believe it was around
16 four hours?

17 A Yes.

18 Q Does the length of the police presence, and that
19 I -- I shall try to define better. The length of
20 time that the individual is with the police, is
21 that a factor under Gudjonsson's research to
22 consider in assessing a person's level of
23 suggestibility?

24 A Yes.

25 Q And are you familiar with how long the police had

1 been involved with Brendan prior to making the
2 March 1, 2006, statement?

3 A I don't know for sure, but I think it was at least
4 several days. That I don't have committed to memory.

5 Q Again, in regards to the Gudjonsson research,
6 what other factors does the Gudjonsson, um,
7 suggest to, for lack of a better term, that re --
8 that forensic psychologists or person's
9 performing evaluations consider as a factor in
10 pertaining to their opinions about
11 suggestibility?

12 A Uh, sleep deprivation, um --

13 Q Well, let's go through each one. Was that a
14 consideration in this case?

15 A No.

16 Q Okay.

17 A Another is the way in which the interrogation was
18 conducted.

19 Q Is that something that you considered, again, in
20 reaching your conclusions in this case?

21 A Yes. I reviewed the, uh, written data, as well as
22 reviewed the, uh, CDs.

23 Q And -- and in that regard, are you referring,
24 specifically, to this issue of yield and shift
25 from the scale?

1 A Yes.

2 Q And I'll get back to that. What other, uh,
3 factors does Gudjonsson -- Gudjonsson recommend
4 using by the evaluator?

5 A Well, considering whether promises were made, whether
6 a person was told of -- that the case was an absolute
7 certainty that they would be found guilty. Whether
8 they were told that there were other in -- there was
9 other information that showed their guilt when it did
10 not -- was not present. When they appealed to
11 different themes of -- such as, uh, we know you
12 really didn't -- minimizing the serious, we know you
13 really didn't mean to do this, or we know you're --
14 you're -- weren't really an active participant, or we
15 know you wouldn't have done this. Now, if you had it
16 to do over again, or your family will be spared a
17 lot.

18 Uh, there are all kinds of different
19 themes that can be developed by an interrogator
20 to increase the likelihood of that occurring.
21 And, then, as the person generally weakens and --
22 and get -- and becomes fatigued, there's a
23 greater chance that they will then give a
24 statement.

25 The likelihood of retraction is very

1 great in cases like this when this is a
2 confession. That's why, uh, it's important to
3 consider whether a written statement was derived
4 from it. Um --

5 Q Let -- let me get back to -- I'll -- I'll -- I'll
6 have some specific questions for you. But let me
7 get back to -- you were talking about techniques
8 or interrogation style. Um, now, again, I -- if
9 I recall correctly, this has something to do with
10 yield and shift; correct?

11 A That's true.

12 Q Now, did you note any of those specific, uh, if
13 you recall, if I might summarize it, as being,
14 you said, leading questions, for instance, and
15 praising or -- or, um, uh, feelings types of
16 questions?

17 A Yes.

18 Q Okay. Let me ask you, again, you reviewed the
19 March 1, 2007 -- or, sorry, 2006 statement;
20 correct?

21 A Correct.

22 Q I'm going to show you what has been marked as
23 216. Do you recall also receiving that
24 transcript of the March 1, 2006, video state --
25 statement?

1 A Yes.

2 Q As an example, I'd like you to turn to page 615?

3 A I am -- I found the page.

4 Q Three down. I guess it would be three names

5 down. I think it starts, "Fassbender." That's a

6 large paragraph.

7 A I see that.

8 Q If you could, uh, begin reading from, "again --

9 ATTORNEY KRATZ: Judge, I'm going to --

10 excuse me. I'd like to interpose an objection. Uh,

11 and if we could approach or if I could be heard

12 outside the presence of the jury, I'd appreciate it.

13 We can probably do it by approaching.

14 THE COURT: All right. Approach.

15 (Discussion off the record)

16 Q (By Attorney Fremgen) I'm sorry. Doctor, do you

17 have before you, now, that same transcript?

18 A I do.

19 Q Okay. You're at page 615?

20 A I am.

21 Q And starting with, um, that same line where it's,

22 "Fassbender," begins, "again," or -- could you

23 read -- and it's a long paragraph. I'm not going

24 to ask you to read the whole paragraph, but if

25 you can read through to, I believe it's the

1 fourth sentence, where it starts, "I just don't
2 see that." If you can read that, please? I'm
3 sorry, read it out loud if you could?

4 A I -- I had to find out where I was supposed to stop.

5 Q Okay.

6 A Sorry.

7 Q That's fine.

8 A (As read) "Again, er, whether Blaine saw it or not,
9 the time periods aren't adding up. They're not
10 equaling out. We know whether -- we know when Teresa
11 got there."

12 In parenthesis, "Brendan nods yes." End
13 parenthesis. "Um, and, I know -- I guarantee ya,
14 Teren -- Teresa's not standing on a porch when
15 you come home from school."

16 Q Okay. Then, if you could skip down to where it
17 says, "Brendan" right after that paragraph? And
18 what is his -- what is the response?

19 A "I got off the bus. I walked down the road, and when
20 I got to that thing, uh, the other house, I just sit
21 in there for nothing. I can see her jeep in the
22 garage just sitting there, and I didn't see Steven
23 and her on the porch."

24 Q The next line that starts with "Wiegert?"

25 A "You -- you did or you didn't?"

1 Q And then "Brendan?"

2 A "I didn't."

3 Q Okay. Is this an example, for instance, of

4 the -- the two -- one of the two phenomena,

5 yield or shift?

6 A Yes.

7 Q And what is it?

8 A It's a phenomenon -- uh, I -- I -- it may be leading

9 in terms of -- it -- it's likely both. And --

10 Q I'm -- I'm sorry. You said likely both?

11 A Both.

12 Q It -- it's -- and is that possible when you're

13 doing, uh, an evaluation under Gudjonsson, that

14 you might have something that is a kind of a

15 hybrid of both?

16 A On the high -- on the Gudjonsson, it -- the -- only

17 measures leading to keep it pure and shift. Uh, it

18 doesn't have the two combined. But in real life,

19 oftentimes questions contain both. There's mild

20 pressure, as well, of some sort, or mild attempts to

21 have a shift along with com -- combination with a

22 leading question with a --

23 Q And in this example, was Brendan's answer a

24 shift?

25 A It was both.

1 Q A response to leading -- to yield and to shift?

2 A Yes.

3 Q Back on 615, Doctor, the same paragraph, that

4 large paragraph, where it begins "Fassbender?"

5 A Yes.

6 Q Near the very end of that paragraph, it -- it

7 begins, "I can tell you, we don't believe." Can

8 you read that line?

9 A (As read) "I can tell you, we don't believe you

10 because there's some things that are wrong, but you

11 got to tell the truth."

12 Q And, again, is that that factor you were

13 discussing in consideration of yield and shift?

14 A That's in consideration of a shift.

15 Q That's the interrogation factor that you were

16 talking about?

17 A True.

18 Q Let me ask you if you could skip to page 587?

19 A I'm there.

20 Q And if you could go eight lines down? Starts

21 with -- the person speaking is -- it says,

22 "Wiegert?"

23 A Yes.

24 Q If you could read from there until I ask you to

25 stop?

1 A How many lines down?

2 Q Uh, eight. Starts with, "Wiegert." It starts,
3 "So Steve stabs."

4 A Okay. (As read) "So Steve -- Steve stabs her first
5 and then you cut her neck."
6 "Brendan" -- in parenthesis, "Brendan
7 nods, uh, yes." End parenthesis.
8 "What else happens to her in her head?"
9 "Fassbender: It's extremely, extremely
10 important you tell us this for us to believe
11 you."
12 "Wiegert: Come on, Brendan, what else?"
13 "Pause."
14 "Fassbender: We know. We just know.
15 You need to tell us."
16 Q I'm sorry. Could you read that line again?
17 A "We know. We just need you to tell us."
18 "Brendan: That's all I can remember."
19 "Wiegert: "All right. I'm just going
20 to come out and ask you, who shot her in the
21 head?"
22 "Brendan: He did."
23 "Fassbender --
24 Q That's -- that's fine, Doctor, right there.
25 A I'm sorry.

1 Q And -- and -- and, again, at that point, is --
2 Uh, my question is, essentially, the same as
3 before. Is this an example of the yield or shift
4 that you were describing previously in the
5 Gudjonsson Suggestibility Scale?

6 A Shift.

7 Q And -- and why is it shift?

8 A Because there's pressure to give a statement rather
9 than merely elicit information.

10 Q And I'm going to ask just one last example. If
11 you could skip to page 574?

12 A Yes, sir.

13 Q If you, uh, go seven lines down. Again, it
14 starts with Officer Wiegert. And it says, "We
15 know what happened." Start with that line?

16 A (As read) "Wiegert: We know what hap -- we know
17 happened."

18 "Fassbender: It's hard to be truthful."
19 "Wiegert: We know what happened. It's
20 okay. What did you do?"

21 "Brendan: I didn't do nothing."
22 "Brendan. Brendan. Brendan, come on,
23 what did you do?"

24 That's what it says.

25 Q If you can go a little further?

1 A (As read) "Fassbender: What does Steven make you
2 do?"
3 "Wiegert: It's not your fault. He
4 makes you do it."
5 "Brendan: He told me to do her."
6 Q And at that point, again, are -- is this, again,
7 an example of these lines, uh, the officers'
8 questions, and the responses, example of the
9 technique you were referring to in how one shifts
10 their answers or yields?
11 A It's an example of using a theme of minimizing, uh,
12 responsibility or culpability or seriousness of a
13 crime, and being sympathetic in an attempt to have a
14 person answer leading questions.
15 Q Okay. And that's the yield that you're
16 describing on Gudjonsson?
17 A Yes.
18 Q I won't go through any further examples, but
19 would it be fair to state that you did review
20 both transcripts, as well as the tape and
21 observed other examples?
22 A I certainly did.
23 Q I -- what I want to go back to is, uh, some
24 additional factors that you considered in regards
25 to, uh, your evaluation. Did you consider

1 character of the defendant? His age, for
2 instance?

3 A Yes.

4 Q And what significance does his age have on your
5 opinion that he is, uh, um, susceptible to
6 suggestion?

7 A Individuals, who are minors, have a greater
8 likelihood of being susceptible, especially, even
9 when they're older minors, i.e., or, that is 15 or
10 16, uh, they have a much higher likelihood of being
11 susceptible -- susceptible, especially when
12 they're -- when that's coupled with low intellectual
13 functioning.

14 Q Does a lack of life experiences or maturity level
15 also impact?

16 A It's --

17 Q On that decision?

18 A Yes.

19 Q Were you able to -- well, do you have any opinion
20 in regards to Brendan, as far as lack of life
21 experiences or maturity level?

22 A His life experiences are limited because of his
23 social withdrawal and social alienation, and his
24 living within -- within himself and within a --
25 mostly relating to his family, not friends.

1 Q Does one's familiarity with the police, is that a
2 factor to consider based on the research of -- in
3 the Gudjonsson, um, research in formulating an
4 opinion on one's susceptibility to suggestion?

5 A Based on Gudjonsson research and others, yes, that's
6 true.

7 Q And was that a consideration with you when you
8 spoke to -- when you rate -- uh, reached your
9 conclusions about Brendan?

10 A Yes.

11 Q How so?

12 A Individuals, who have minimal or no contact -- with
13 no criminal history, have a greater chance of -- or a
14 greater susceptibility to being suggestible.

15 Q Does anxiety -- is that a factor to consider, uh,
16 in the research or in the Gudjonsson research
17 when reaching your conclusions as to
18 susceptibility to suggestion?

19 A Yes.

20 Q And was that a factor in this case when you met
21 with Brendan?

22 A Yes, because both state anxiety, anxiety at the time
23 of an incident, of an interview, as well as trait
24 anxiety, whether a person has a trait of being
25 anxious, in general, during their life, is correlated

1 with increased suggestibility as well.

2 Q In regards to, uh, learning disabilities, is that
3 a factor that you would consider in reaching your
4 conclusion?

5 A Yes.

6 Q And was that a factor in this case?

7 A Brendan told me that it was a factor during the
8 interview, and I, subsequently, had an opportunity to
9 review about two inches, uh, worth of, uh -- two
10 inches of collateral data from the school system
11 showing that he had been having substantial learning
12 problems, and special programming, and individual
13 education programs throughout his education.

14 Or, I should restate. At least that --
15 back to fourth grade. Maybe earlier. And it was
16 pointed out to me.

17 Q But -- but you only had the material back to
18 fourth grade?

19 A I believe so.

20 Q Um, would you consider any one of these
21 characteristics, or traits, individual? Away
22 from the -- I guess the context of it in its
23 totality when making your determination whether
24 one is susceptible to suggestion?

25 A No.

1 Q Why not?

2 A It's essential to do a comprehensive evaluation to
3 get the most accurate -- have the most accurate,
4 valid conclusions to let this jury know what the
5 status is of Brendan's suggestibility, or lack
6 thereof. And to do that, I administered a variety of
7 tests, as do other forensic psychologists, who do
8 this type of work, to provide that information.

9 Q When you reached your conclusion that you've
10 previously stated, did you consider all of these
11 factors?

12 A I should answer out loud. Absolutely.

13 Q Is the factor -- is another factor to consider,
14 memory or memory deficits?

15 A It is.

16 Q Now, in that regard, did you actually perform any
17 tests on Brendan to assess his memory?

18 A No.

19 Q Did you review any collateral information that
20 might, uh, have, uh, assisted you in determining
21 what level of -- or what type of memory he has?

22 A Yes.

23 Q And what were those records?

24 A Records were --

25 ATTORNEY KRATZ: Judge, excuse me.

1 A -- school records.

2 ATTORNEY KRATZ: I'm going to ask that
3 that question be phrased before or after he's
4 rendered his opinion in this case.

5 ATTORNEY FREMGEN: That's fine.

6 ATTORNEY KRATZ: In other words, when they
7 were -- when they were reviewed and -- and were they
8 included in his opinion.

9 THE COURT: Go ahead. Rephrase it.

10 ATTORNEY FREMGEN: That's fine.

11 Q (By Attorney Fremgen) And my question is, did
12 you review any records that reflected upon
13 Brendan's memory? Whether he has a deficit or
14 not? And was -- did you review those before or
15 after you performed your original evaluation of
16 Brendan?

17 A That's two questions. I, uh reviewed documents
18 regarding memory, but those documents were from the
19 school, and they occurred after the time that I wrote
20 a report summarizing my findings.

21 Q Did it impact -- did those additional records
22 impact on your opinion?

23 A They reinforced, uh, and were consistent with my
24 opinion.

25 Q In regard to your opinion, in case I may have

1 forgotten to ask, are all of your opinions today,
2 in regards to Brendan, within a reasonable degree
3 of psychological certainty?

4 A Yes.

5 ATTORNEY FREMGEN: Judge, I have nothing
6 else.

7 THE COURT: Uh, we'll break until 10:35.

8 ATTORNEY KRATZ: That's fine.

9 THE COURT: Presumably you have some
10 cross-examination questions?

11 ATTORNEY KRATZ: I certainly do, Judge.

12 (Recess had at 10:15 a.m.)

13 (Reconvened at 10:38 a.m.)

14 THE COURT: Mr. Kratz.

15 ATTORNEY KRATZ: Thank you, Judge.

16 **CROSS-EXAMINATION**

17 BY ATTORNEY KRATZ:

18 Q Good morning, Dr. Gordon. Thank you, once again,
19 for -- for coming this morning.

20 A Good morning. My pleasure.

21 Q First of all, I want to talk about your
22 profession, generally. That is, the profession
23 of psychologist. Uh, it's not unusual for
24 psychologists, whether clinical or forensic
25 psychologists, to appear and testify in a court

1 proceeding; is that correct?

2 A No, it's not unusual.

3 Q Are there, however, rules of professional conduct
4 for a practicing psychologist, similar to the
5 rules of professional conduct that lawyers have
6 to -- have to live by?

7 A I don't know if there -- whether there's rules.
8 There are ethical standards and principles, yet, for
9 both the American Psychological Association and, as
10 promulgated by, uh, the, uh, forensic component that
11 I referred to, of the APA.

12 Q All right. And I understood, at least from, uh,
13 a last opportunity that you and I had to talk,
14 uh, about this case, that, uh, you are vigilant
15 in complying with those rules? In other words,
16 and not to put too sharp a point on it, but, uh,
17 you pride yourself in not just giving the answer
18 that a client wants to hear, but, uh, in giving
19 both sides, if, in fact, that is what the
20 evidence points to; isn't that true?

21 A I try my best.

22 Q Do your, um, ethical rules, in fact, uh, prohibit
23 or frown upon promising, um, what you might say
24 in advance of being retained by a specific
25 client?

1 A Yes.

2 Q Do they frown upon a prediction or an advanced,
3 um, promise of what you might say in court or in
4 a testimony kind of setting?

5 A They don't frown on saying whether the case seems
6 like it's worthy of evaluation, but in terms of
7 promising results in writing or at testimony, that's
8 not proper.

9 Q As an example, it's not proper to promise that
10 you won't change your opinion, or you won't
11 change your answer, as a result of what we're
12 going to do now, which is cross-examination?
13 That's true; isn't it?

14 A My opinion is my opinion. So, it -- it's not
15 changing.

16 Q My question is, is it improper, uh, within your
17 rules of professional, um, standards, to promise
18 or predict that you will not change your opinion
19 after being cross-examined in court?

20 A I can't answer that yes or no. It depends.

21 Q So, no matter what I might present to you, um, to
22 the contrary, or what facts that I may, uh,
23 present you, uh, do you still believe that you
24 are open to revising the opinion that you have
25 first, or during direct examination, furnished to

1 this jury?

2 A If I obtain additional research information or
3 additional collateral data that I didn't have before,
4 then that's true.

5 Q Okay. And I -- I think that's what I was -- that
6 I -- that's what I was talking about. You talked
7 about your qualifications on, uh, direct
8 examination, and uh, you have indicated that this
9 is the first time, uh, that you've ever presented
10 this suggestibility theory or the suggestibility
11 findings before a jury; isn't that true?

12 A That is true.

13 Q And isn't it also true, Doctor, that, to your
14 knowledge, since you're a forensic psychologist
15 you may know this, this is the first time ever in
16 Wisconsin that this kind of testimony's been
17 offered to a jury?

18 ATTORNEY FREMGEN: I would object. I don't
19 think that's necessarily accurate.

20 ATTORNEY KRATZ: If he knows, Judge. If he
21 doesn't know, I'll --

22 THE COURT: With that stipulation, go
23 ahead, you can answer.

24 THE WITNESS: I don't honestly know.

25 Q (By Attorney Kratz) All right. The fact is,

1 though, Doctor, that when you talked about other
2 psychologists that do this kind of work, and I --
3 and that's a quote that I wrote down --
4 A Uh, uh, if I can go back to the prior question. I --
5 I misstated.
6 Q Okay.
7 A I -- I did testify, on one occasion, up in Wausau,
8 and it was before a jury regarding this very matter.
9 I for -- I forgot. I'm sorry.
10 Q Back to my original question. When you talked
11 about others doing this kind of work, do you know
12 of other psychologists, uh, in the state of
13 Wisconsin, who are going around offering
14 suggestibility testimony to juries?
15 A Going around and offering. I -- I don't know of
16 other psychologists who are conducting such
17 evaluations and providing information like this to
18 the Court. Although, they may exist. I don't know.
19 Q All right. Well, you -- you've told this jury
20 about how well, um -- how well read you are, at
21 least how you keep up on this particular area,
22 uh, of, uh, forensic psychology. If that was
23 something that was commonly done, or even in
24 Wisconsin if it was something done, you'd likely
25 know about it, wouldn't you?

1 A If was commonly done, that's true.

2 Q Let's talk about the specific tests that you did
3 perform. Uh, I interposed some objections about
4 the Wechsler, uh, test, and how it was scored or
5 how it was scaled. Do you remember those
6 objections?

7 A I do.

8 Q The, uh, original chart that was placed up there
9 found Brendan to have a full scale Wechsler
10 Intelligence, uh, score of 81. And at least your
11 suggestion, uh, was that that fit within the
12 borderline, um, intelligence category.

13 My question for you, Doctor, is, um,
14 under the Wechsler, uh, scale itself, under the
15 Wechsler, um, analysis of that particular IQ
16 score, and I think you correct yourself, that he,
17 in fact, fits in a category called low average;
18 isn't that right?

19 A He's in the lower end of the low average, according
20 to Wechsler's norms. True.

21 Q All right. Now, I'm going to be skipping pretty
22 far ahead. But your eventual, um, opinion is
23 going to be based, in large part, on something
24 called the Gudjonsson Suggestibility Scale,
25 which, as I understand, includes a consideration

1 of an individual's IQ level. Is that true?

2 A That's an in-- that's a mischaracterization of my
3 testimony. It -- you said, in large part, it would
4 be based on Gudjonsson. And I said I -- I couldn't
5 assign a percentage. That it was relying on all the
6 different tests, collateral data and interview.

7 Q The term "vulnerability to suggestibility." Does
8 that depend upon IQ levels? Or at least that's
9 one of the factors that you have to consider?

10 A Yes.

11 Q To render that opinion, or to, um, have a
12 particular subject fit within a category that is
13 consistent with vulnerability to suggestibility,
14 uh, is it a fair statement that, uh, that
15 hypothesis is furthered -- or that hypothesis is
16 supported if an individual has a borderline
17 intellectual capability or borderline IQ rather
18 than low average? Or am I overstating that --
19 that, uh, distinction between Wechsler and your
20 original testimony?

21 A I think you're overstating it. Uh --

22 Q All right.

23 A The -- the percentile is what's most important to
24 consider. That -- that standard across the Wechsler
25 norms and the DSM norms.

1 Q All right. In your, uh, performance of the IQ
2 tests, you mentioned that that was, um, important
3 to you. In other words, getting a, uh -- a
4 relatively accurate read of Brendan's current IQ
5 level was important?

6 A True.

7 Q Is that what you said? I think you mentioned
8 that, because this was such an important case,
9 and, um, because of the, uh, opinion that you
10 wanted to give to this jury, uh, coming up with
11 a, um -- a, uh -- an accurate value, or at least
12 a, uh -- a range, uh, was important for you.
13 That's fair, isn't it?

14 A It's fair.

15 Q All right. The Wechsler, uh, Intelligence Scale,
16 even the abbreviated version that you give, how
17 many sub-tests are included in that particular
18 test?

19 A There are -- either two can be administered or four
20 can be administered. I administered two.

21 Q What does that mean, either two or four can be
22 administered? I assume one can be administered;
23 isn't that true?

24 A That's not true.

25 Q Why did you administer two instead of the four

1 sub-tests of that?

2 A I wanted to obtain an overall IQ estimate and compare
3 it to the Kaufman Brief -- it's Brief Intelligence
4 Test, uh, to see if there was consistency. If there
5 was no consistency, uh, then I would have found the
6 need to go into more comprehensive intellectual
7 testing. As I indicated before, the interviewing and
8 the testing process determines what tests I
9 administer to --

10 Q Was this anything that prevented you from
11 administering all four of the sub-tests for this
12 IQ test to Mr. Dassey?

13 A No.

14 Q You next talked about -- or at least in your
15 report, you talked about the 16-PF, which I think
16 you described as a -- called it a test, uh, that
17 evaluates, quote, unquote, normal
18 characteristics, at least under general
19 circumstances. Is that a fair characterization?

20 A It's a --

21 Q As opposed to the MMPI, or something that looks
22 at the more deviant or -- or problematic
23 individuals?

24 A I would agree with what you said, except you said,
25 under normal circumstances. I mean, I -- I -- I

1 get -- I guess I'm not understanding your question.

2 I beg your pardon.

3 Q Well, I -- we can get right to the -- the
4 conclusions of the 16-PF. Did you agree with the
5 findings of your -- or of the results from the
6 16-PF test?

7 A I found them to be consistent with the other test
8 results and the rest of the evaluation.

9 Q I assume you've been asked to bring your file and
10 the results with you here to court; is that
11 right?

12 A Yes, I have.

13 Q If you'd be so kind, Doctor, as to turn to your
14 results of the 16-PF test. And as you're doing
15 that, or as you're looking for that, I'm sure you
16 can, um, also answer this. How was this test
17 scored? In other words, do you score it or do
18 you send it away to be scored by somebody else?

19 A Uh, it's computer scored from my office. Um, and the
20 scores are then interpreted into a report. Uh, bear
21 with me, please.

22 Q I will.

23 A I'm looking. I'm looking. I'm sorry.

24 Q And so the jury understands what you're looking
25 at, it is a -- a printout, a report, if you will,

1 of the results of the, uh, administration of the
2 examination to Brendan; is that right?

3 A It's a computer-generated report of hypothesis
4 regarding individuals who have scales that he
5 obtained on this particular questionnaire.

6 Q Okay. If you'd be so kind as to turn to page,
7 three, then, the very last category is called,
8 uh, cognition and communication. Do you see
9 that?

10 A Yes.

11 Q Within this report, it suggests that, although
12 not necessarily a measure of general
13 intelligence, it does test one cognitive skill,
14 namely, the ability to manipulate verbal
15 concepts. I was curious as to what that meant.
16 Maybe you can describe that for the jury? What
17 is the ability to manipulate verbal concepts?

18 A Well, I can only tell you what the test -- it's a
19 component of the test where there are analogies, uh,
20 such as, uh, a -- a pear is to an apple as a dog is
21 to, fill in the blank. And maybe there'd be cat,
22 tree and whatever. Uh, that's an example.

23 Uh, there are also, uh -- this is not on
24 the test, but for sake of discussion, uh, please
25 fill in what would be the proper number in

1 sequence. If you have the numbers one, three and
2 five, and then they have six, seven, eight and
3 nine, and you're supposed to pick the --

4 Q All right.

5 A -- correct answer. I mean -- and, so, it -- it does
6 not yield an IQ score, it just yields a general idea
7 of how they answered those questions. It's not --
8 it's a personality test. It's not an IQ test.

9 Q But this report, if believed, suggests that
10 Brendan does function adequately in his ability
11 to manipulate verbal concepts. Isn't that what
12 it says?

13 A Well, it was -- says, in its entirety, as well as
14 scale, does not necessarily measure general
15 intelligence. It does test one cognitive skill,
16 namely, the manip -- ability to manip -- manipulate
17 verbal concepts. In this area, appear -- he appears
18 to function adequately on this particular scale,
19 which is not an IQ test.

20 Q Okay. Do you agree with that statement?

21 A No.

22 Q Really?

23 A You act surprised.

24 Q Do you know what the term "cherry picking" means?

25 A I do.

1 Q And "cherry picking," at least in the concept of
2 professionals who testify, is they present to
3 juries what might support their client's
4 position, but they keep from them, or they don't
5 report, the things that don't, or that, uh, might
6 undermine their opinion. That's a fair
7 characterization of that term?

8 A That is true.

9 Q By the way, anywhere in your report or your
10 conclusions, did you include the 16-PF conclusion
11 that Brendan's ability to manipulate verbal
12 concepts, uh, was of an adequate functioning
13 level? Did you include that anywhere in your
14 report?

15 A I did not include that computer-generated hypothesis
16 in my report. That's correct.

17 Q Next test that you had Brendan perform, or the
18 next one that you talked about, was something
19 called the State Trait Anger Expression
20 Inventory. You're familiar, I know, with that
21 particular test. And, in fact, in your report,
22 uh, dated November 15, 2006, you discuss how the
23 State Trait Anger Expression Inventory factored
24 into, or was considered by you, in your ultimate,
25 uh, analysis and conclusion. That's true; isn't

1 it?

2 A That's true.

3 Q In your written report, that is, the report that
4 you have provided to Counsel and to Court, you
5 indicate the following: And I'll just read this
6 to you. You're not going to have to -- to look
7 at this. I'm sure you'll recognize this
8 sentence.

9 (As read) "The State Trait Anger
10 Expression Inventory was further used to assess
11 for features of anger, passivity and anxiety."
12 You remember writing that?

13 A Yes.

14 Q And, in fact, did you, uh, take the results of
15 this particular instrument and apply it to the
16 features that you suggest in your report? That
17 is, anger, passivity and anxiety?

18 A I'm sorry. Um, I considered the results.

19 Q Now, the State Trait Anger Expression Inventory,
20 first of all, is that a test? Is that something
21 that psychologists normally call a test or not?

22 A No. We normally call it an inventory.

23 Q All right. The difference between inventory and
24 tests are, uh, and -- and correct me if I'm
25 wrong, but a test are something that have norms.

1 That is, it's something that can be objectively
2 scored; isn't that true?

3 A No. Tests more are synonymous with tests of IQ,
4 tests of achievement abilities, academic abilities.
5 The personality inventories are more to do with
6 assessing personality traits, emotional problems,
7 that sort of thing, uh, as compared to the IQ part.

8 Q All right. Let me just ask you, then, about the
9 State Trait Anger Expression Inventory. Um, do
10 the results of that particular test have norms to
11 compare it to?

12 A Yes.

13 Q By the way, um, the term "anxiety," which you
14 express in your report, was one characterasistic
15 (phonetic) -- characteristic that you used this
16 instrument to examine. Is there anything in this
17 particular instrument that talks about anxiety at
18 all?

19 A I might have been confused. As a State Trait --
20 there -- there are two tests by Charles Spielberger,
21 out of Florida. Uh, one primarily measures anxiety,
22 one measures anger.

23 Q Correct.

24 A And I may have confused the two and thought that
25 ang -- anger expression inventory also included

1 anxiety.

2 Q But it doesn't, does it?

3 A I -- from the way you're looking at me, I don't think
4 it probably does.

5 Q Why, if -- if anxiety was something that you
6 thought was important to gauge with this young
7 man, which I think your report indicates it is,
8 why didn't you give the State Trait Anger -- or,
9 excuse me, State Trait Anxiety Inventory instead
10 of the Anger Inventory?

11 A Because I gave the -- another test that would measure
12 that on a variety of anxiety scales, and that would
13 be the Minnesota Multiphasic Personality Inventory,
14 slash, Adolescent version.

15 Q A perfect segue to my next questions, Doctor.
16 The MMPI-A, or the adolescent version, I think
17 you cautioned before that you can't really look
18 at any specific answer to any specific question,
19 that that might be somehow misleading, and I was
20 confused as to why that would be. Can you
21 explain that again?

22 A Uh, by reading one particular response, one can then
23 conclude that that -- conclude that that can be used
24 to draw definitive conclusions. And, uh, taking it
25 out -- out of context is very likely to mislead a

1 jury. And I'm sure you wouldn't want the jury to be
2 misled.

3 Q I'm sure I wouldn't either. And -- and that's
4 why I'm going to ask you some of these, uh --
5 some of these specific questions. Brendan, when
6 provided these questions, or when asked questions
7 on what's called the MMPI, uh, was asked series
8 of 478 true/false questions. He could either say
9 true or he could say false on the answers; isn't
10 that right?

11 A That's right.

12 Q Now, as you told this jury, there -- after the
13 results are obtained, there's various scales. In
14 other words, how he answers questions on --
15 particular answers or, I guess, more
16 appropriately stated, uh, the combination of
17 certain answers, uh, can, um, oftentimes, be, um,
18 considered by trained professionals and some
19 tendencies might be able to be developed
20 regarding characteristics -- personality
21 characteristics. That's fair, isn't it?

22 A True.

23 Q Did you assume that Brendan, when asked these 478
24 questions, gave truthful or accurate responses,
25 at least as he believed them to be?

1 A It was my interpret -- my conclusion that they were
2 accurate, because there are validity scales on the
3 MMPI, and on most personality inventories, that show
4 whether a person is answering in a straight forward
5 fashion, minimizing or exaggerating.

6 Q All right.

7 A And if those are scores -- the validity scores are so
8 abnormal to such a degree that it shows that person
9 was extremely (inaudible) or exaggerating, then I --
10 I can't interpret the pro -- I don't -- you can't
11 interpret the profile because the -- the scores
12 either over or underestimate emotional problems.

13 Q Now, in the interpretation of these answers or
14 the profiles, um, this particular instrument
15 allows trained psychologists to look at various
16 scales. You talked about one that, uh, is, um --
17 or included shyness or social anxiety, um, or
18 social alienation, uh, is that -- is that
19 correct?

20 A Shyness was on the 16-PF, social alienation was on
21 the MMPI-A.

22 Q All right. Social -- and social avoidance as
23 well?

24 A That's true.

25 Q What -- what's that scale called, by the way,

1 when you test for those particular
2 characteristics? Which scale are we looking at?
3 A Social avoidance.
4 Q Have any other name to it on the MMPI? Often
5 referred to as the zero scale?
6 A No. No, not at all. Uh, that's a different scale.
7 That's social introversion. But there are other
8 supplementary scores. And, so, the -- social
9 avoidance is -- comes from the social introversion
10 scale. It's in parenthesis, SI-2. It's one
11 component of the Social Introversion Clinical Scale.
12 Q All right. And so this jury understands, there
13 were other things that you could have scored this
14 test for? There are other, um, personality
15 characteristics that you could have rendered
16 opinions about in this case, but that you chose
17 not to. Is that true?
18 A Although there are hundreds of scales that could be
19 scored, I used the ones that are recommended by the
20 University of Minnesota and the original test
21 constructors in James Butcher and Doctors Archer and
22 Doctors Ben-Porath, among others.
23 Q For what? I mean, you must have been looking for
24 something.
25 A No.

1 Q You -- you were looking for suggestibility --
2 A No, I was just --
3 Q -- issues, weren't you?
4 A I'm sorry for not letting you --
5 Q Go ahead.
6 A Uh, I was not looking -- I was looking for
7 information designed to address those questions, and
8 there are a broad range of questions that are
9 computer scored that come back -- or, actually, are
10 done on my computer, electronically sent to Minnesota
11 and back, and I could count the number of scales.
12 There -- There's, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
13 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,
14 25, 26, 27, 28, 29, 30, 31 --
15 THE REPORTER: Please slow down.
16 THE COURT: Slow down. Just take your
17 time.
18 THE WITNESS: Sorry, sir.
19 Q There's lot of scales. That -- that's --
20 A I can go on. And I'm just -- so I would guess that
21 70 scales are -- are on what is called the -- from
22 the MMPI, um, it's from the, uh, extended score
23 report for the MMPI-A.
24 Q And of those over 70 scales, how many did you
25 score for?

1 A All of them were scored.

2 Q Oh, good. Then I can ask you some questions
3 about the ones we haven't heard about, I assume?

4 A Sure.

5 Q Good. By the way, um, you were asked to provide,
6 and I assume you brought with you, the individual
7 questions that Brendan was asked, and you have
8 available for you individual answers that he
9 gave. Isn't that true?

10 A I have -- I have the individual answers he gave, but
11 I gave the, um, test questions, even though it's a
12 violation of my contract with the University of
13 Minnesota, um, I provided that to my -- or to my,
14 uh -- the attorney that retained -- retained me.

15 Q All right. But you've got the answers, then,
16 with you at least?

17 A I -- I -- I -- yes, I do.

18 Q When was this test administered to Brendan?

19 A November 13, 2006.

20 Q Who was it administered by?

21 A Me.

22 Q Did you record the answers that Brendan gave when
23 you asked him specific questions?

24 A At this point, uh, Counsel, I don't recall whether
25 I -- whether I read the questions to him or if I had

1 him read the questions and answered them.

2 Q All right.

3 A If I -- I don't recall.

4 Q I'm going to ask you to refer to your answer
5 sheet, and I'm going to ask a couple of specific
6 questions and ask how Brendan answered them.

7 I'll first ask you, question number 265,
8 Brendan was asked, (as read) "I think nearly
9 anyone would tell a lie to keep out of trouble."
10 Two sixty-five. Tell the jury how Brendan
11 answered that question, please?

12 A Well, again, saying that it's going to be misleading,
13 and -- it -- it says, "True."

14 Q He said, "True." Anyone would lie to keep out of
15 trouble.

16 Question number 391, Brendan was asked
17 this question:

18 "When I am concerned, I tell that
19 portion of the truth which is not likely to hurt
20 me."

21 Tell us what Brendan's answer was to
22 391, please?

23 A Well, as I said on direct, this is a misuse of the
24 test, but he said --

25 Q Doctor --

1 A He said, "True."

2 Q Is there a problem? You don't understand my
3 question or you --

4 A Well, I can't -- well, then, I can't answer it when
5 it mischaracterizes my testimony.

6 Q You can't answer true or false to what his answer
7 was?

8 A Not when it's in a misleading --

9 Q Oh, I see. All right.

10 A I'm sorry.

11 Q Well, let's talk about misleading the jury, then.
12 The MMPI could be scored for something called
13 anti-social personality traits. In other words,
14 to determine whether or not somebody lacks guilt
15 about criminal exploits that they're involved in.
16 That's true, isn't it?

17 A There are several such scales.

18 Q Did you score for any of those?

19 A Yes.

20 Q Now, anti-social or --

21 A Well --

22 Q Oh, I'm sorry. Because he's under 18, did you
23 want to say something about that or not?

24 A No. You -- you're right. You can't make a diagnosis
25 of anti-social personality disorder for an individual

1 under the age of 18. But there is no scale,
2 specifically, listed as anti-social traits or
3 whatever you referred to. There are similar
4 statements, but not that one.

5 Q All right. Suffice it to say, Doctor, uh,
6 Gordon, that that scale and those results were
7 not included in your official written report to
8 the Court?

9 A Which scale?

10 Q Any scale that dealt with Mr. Dassey's, um,
11 personality characteristics takes that might show
12 a conduct disorder or anti-social personality
13 disorder?

14 A That was --

15 Q It was not included; isn't that right?

16 A Because it wasn't, uh, indi -- so-indicated. Yes.

17 Q You interviewed Brendan, you said, on the 3rd and
18 10th of November?

19 A Yes.

20 Q Now, during your interview with Brendan, you
21 described him as being sad, polite and passive.
22 That's correct, isn't it?

23 A Yes.

24 Q Within your report to the Court, you noted that
25 Brendan was nervous getting up in front of

1 people; is that right?

2 A That's what he told me.

3 Q Do you feel that that was significant to the

4 ultimate conclusion that you rendered in this

5 case as to vulnerability to suggestibility?

6 A It is a -- it's a factor that's related to it, yes.

7 Q Oh. Lot of people get nervous standing up in

8 front of crowds or in front of people?

9 A Socialphobia is the number one, uh, fear there is.

10 Q All right. And death is number two; isn't that

11 right?

12 A I -- I -- I -- I'm just told the number one, which --

13 Q People are more nervous about getting up in front

14 of a crowd than they are about dying. That's the

15 point?

16 A That's your point. I don't know that that's number

17 two.

18 Q All right.

19 A They might be socially phobic about standing up and

20 talking about death, for all I know.

21 Q Brendan also said that he was nervous when

22 meeting new people; isn't that right?

23 A That's right.

24 Q Lots of people get nervous meeting new people; is

25 that right?

1 A Some people do.

2 Q During your interview, you also mentioned,
3 however, that Brendan exhibited no symptoms of
4 depression, no appetite problems, or any of those
5 kinds of -- of issues. Is that fair?

6 A That's what he told me. Except -- and the only thing
7 that was indicative of sadness was the, uh -- the
8 look on his face and the poor eye contact.

9 Q Poor eye con -- I'm sorry?

10 A And the poor eye contact.

11 Q All right. Now, contrary to what you saw, in
12 other words your observations of Brendan, the
13 MMPI suggests that Brendan has the type of
14 personality that, uh, he might exhibit many, uh,
15 of such or of those kinds of complaints. Is that
16 what the MMPI report says?

17 A I'm sorry?

18 Q Isn't that what the MMPI report says?

19 A The -- do you want me to read from what --

20 Q No. What I want you to do is -- does the MMPI
21 conclusion contradict, or is it different than
22 what you personally observed of Brendan?

23 A It doesn't contradict.

24 Q Is it different then?

25 A No, uh, he -- he didn't exhibit -- he denied feeling

1 depressed and he denied having physical vegetative
2 signs of depression like, sleep, appetite, headaches
3 stomachache. He's denied that. Um, but it does say
4 he seems generally un -- unhappy and pessimistic
5 about life. My observation of him was consistent
6 with that.

7 Q Were there any instances, whether it's in your
8 report or not, Doctor, where the test results
9 that you obtained from any of these instruments
10 were in contrast to what you personally observed
11 with Brendan?

12 A I'm sorry, Counsel, I --

13 Q I'll ask that again.

14 A I wasn't -- I was -- my mind went off in --

15 Q Were there any circumstances where the test
16 results that you obtained, or the test result,
17 um, conclusions, were in contrast or were
18 different to what you personally observed from
19 Brendan?

20 A On the MMPI?

21 Q On anything. Any of the test results. I'm just
22 wondering if that phenomenon ever occurred?

23 A The only one, is there -- there -- he -- as I said
24 before, he was elevated on a scale of hypochondriasis
25 and also on other subscales measuring semantic

1 complaints. And that's -- he didn't report that to
2 me.

3 Q All right. When that happens, when the test
4 results differ from what you see with your own
5 eyes, um, how do you reconcile that? Which of
6 the two do you, um, adopt, if you will?

7 A Research has shown that testing -- actuarial testing,
8 as well as objective testing, is usually a better --
9 there's usually better reliability and validity of
10 that than a person's conducting an interview.

11 Q All right. Doctor, uh, Gordon, when you
12 interviewed Brendan, you said that he appeared
13 polite and was responsive to all of your
14 questions; is that right?

15 A He answered all of my questions. There's a slow
16 reaction time. He was polite, yes.

17 Q He appear hostile at all to you?

18 A No, sir.

19 Q Have you ever had a interview in your many years
20 of being either a clinical or forensic
21 psychologist where, uh, the subject that you were
22 interviewing had a dislike for either you,
23 personally, or members of your profession?

24 A I'm sorry. Yes, I have.

25 Q All right.

1 A It's not funny, but it -- it definitely has happened.

2 Q Tell us about when, uh -- when that happens,
3 because I'm sure lawyers have that as well, um,
4 what do you observe when an individual has a, uh,
5 uh -- either a personal dislike or that of your
6 profession?

7 A Well, they don't -- usually don't dislike only my
8 profession. They dislike judges, uh, attorneys,
9 guards. And they feel like they're the victim of a
10 system, and they can be -- have histories of being
11 aggressive and, uh, they can, uh, specialize in
12 swearing and being vulgar. And, uh, I am -- I never
13 needed to push the alarm button yet, but, uh, I am --
14 I don't push things too hard when I'm trying to get
15 information because I value my personal safety.

16 Q Let's at least start or, uh, confine ourselves to
17 the -- the -- the -- the lower end of that scale,
18 that at least they're not physically, uh,
19 assaultive towards you. It's fair that it's more
20 difficult to obtain information from them? They
21 aren't as free to provide you with answers or
22 with information than you otherwise might like;
23 isn't that true?

24 A If a guard -- person is guarded or hostile, it's much
25 more difficult to obtain information.

1 Q They're certainly not predisposed to cooperate
2 with you; right?

3 A No. No, sir.

4 Q Well, wouldn't the same be expected if somebody
5 had a dislike, generally, for police officers?
6 Wouldn't you expect them to be more guarded and
7 less free to provide inculpatory information?

8 A In general, that would be true. In con -- if you
9 don't -- if you're only considering that and not
10 other factors.

11 Q If -- let's assume, for the sake of argument,
12 that this young man, Brendan Dassey, uh, had a
13 predisposition or a dislike of law enforcement or
14 police officers, generally. Wouldn't you expect
15 Brendan to be less forthcoming instead of more
16 forthcoming with information in the course of an
17 interview?

18 A If I only considered that factor alone, then that's
19 probably true.

20 Q You talked about the concept of suggestibility,
21 and I want this jury to understand my first
22 series of, uh, objections earlier in your direct
23 examination.

24 You talked about something -- about
25 false confessions, and then you talked about

1 suggestibility. Do you agree that those are two
2 distinct -- those are two separate concepts;
3 isn't that right?

4 A Yes.

5 Q In fact, somebody who is suggestible, that is,
6 somebody who is vulnerable to suggestibility, is
7 just as likely to provide a true confession as
8 they would be to provide a false confession;
9 isn't that true?

10 A I don't know if just as likely, but -- but I can tell
11 you that individuals who are suggestible certainly --
12 increasingly suggestible -- certainly have a -- a
13 greater chance of providing a confession, period.
14 And it could either be true or false.

15 Q All right. So -- so this jury understands,
16 you're not commenting on the, um, truthfulness or
17 reliability or believability of an admission or a
18 confession that might be provided by a
19 suggestible person? Just that they may be more
20 vulnerable to suggestibility?

21 A I'm not commenting on truthfulness and falseness.
22 But I am here to talk about reliability and
23 suggestibility. That I can comment on. That is
24 different than being truthful. Reliable is different
25 than being truthful or false. I can't tell this

1 Judge, or this jury, or anyone in here whether --
2 That's not my job. I'm not here to do that.

3 Q Doctor Gordon, do you remember, the last time we
4 had a chance to speak, me asking you the specific
5 question that Brendan was just as likely to
6 provide a true confession as a false confession?
7 Remember me asking you that?

8 A Yes.

9 Q Remember --

10 A I mean --

11 Q -- what your answer was then?

12 A No, but you can tell me.

13 Q I'm asking you if you remember?

14 A No, I don't.

15 Q Your answer today, if I can -- if I could ask you
16 that specific question again, is what?

17 A He --

18 Q Isn't Brendan just as likely to provide a true
19 confession as a false confession?

20 A I don't know. Just -- he has -- he has a -- it's
21 like -- it's -- it is possible that if he provides a
22 confession, it could either be true or false.
23 That -- that is what I would say.

24 Q Now, the concept of suggestibility is not a -- a
25 discipline or an area that is just unique to

1 police interrogations. It's something that we
2 see every day with marketing, or advertising, or,
3 uh, fields like that. Isn't that true?

4 A That's true. But, uh, there are different -- the
5 research regarding suggestibility in criminal matters
6 cannot always be applicable to other kinds of
7 suggestibility. For example, suggestibility scales
8 for hypnotism and likelihood to be hypnotized are --
9 are not correlated at all.

10 Q I'm not asking what hypnotic suggestibility --
11 My -- my question is whether somebody is
12 suggestible? And this kind of goes to the true
13 or false confession. The suggestibility doesn't
14 remove somebody's ability to reason? In other
15 words, to choose one, um, answer or another?
16 That's true, isn't it?

17 A Suggestibility -- if they're more suggestible, it
18 reduces the likelihood of that.

19 Q I'm sorry?

20 A What's your question again, please? Maybe --

21 Q Suggestibility doesn't remove somebody's
22 decision-making ability? They still get to
23 choose whether they're going to adopt that
24 suggestion or not; isn't that right?

25 A They still get to choose, but their choosing can be

1 affected by their psychological characteristics
2 and -- and the way they're being interrogated.

3 Q I'm not talking about interrogation. As an
4 example, if somebody tells you to buy a Chevy
5 over a Ford, they may be suggesting that you buy
6 a Chevy, but you still get to make that
7 decision --

8 A In that case, that's true.

9 Q If somebody tells you you should order a pizza,
10 you get to decide if you're going to order a
11 pizza; is that right?

12 A That's true. If my wife says, order a pizza, and I
13 don't want it, I -- there might be a little bit of
14 persuasion for me to get the pizza. You see?

15 Q I appreciate there's those other factors. By the
16 way, the area of suggestibility is not a
17 recognized specialty or even a sub-specialty in
18 the area of psychology, whether forensic or
19 otherwise; isn't that true?

20 A Sub-special -- it -- it -- fitness -- that's true.
21 Fitness to stand trial, NGI, uh, those are not
22 sub-specialties. Forensic psychology is a
23 sub-specialty.

24 Q I asked about suggestibility. Doesn't -- doesn't
25 fall under those categories of specialty or

1 sub-specialty?

2 A No.

3 Q Now, you told this jury that you reviewed the
4 videotaped interview of Brendan on the 1st, and
5 some written narrative or a transcript, I
6 suppose, of an interview on the 27th of February;
7 is that right?

8 A True.

9 Q And that some time later you got some school
10 records to, um, review in case you were asked
11 about that here at trial? Or -- or -- let me ask
12 it a different way. To, um, consider and
13 determine whether or not it might affect your
14 opinion of Brendan?

15 A That's true.

16 Q By the way, how did watching that interview, and
17 this jury got to see that, uh, interview, they
18 got to see about -- just under three hours of
19 what you've called the four-hour interview, but
20 how did watching the first three hours of that
21 interview impact or affect your, um, report? You
22 understand my question? Or would you like me to
23 be more specific?

24 A I could try to answer, but if you could be more
25 specific, that might be helpful.

1 Q Whether you watched that interview or not, would
2 you have been able to render these same
3 conclusions? That is, that Brendan was, uh,
4 vulnerable to suggestibility? Or did you need to
5 watch that March 1 interrogation to come to that
6 conclusion?

7 A It wasn't absolutely necessary, but it was helpful.

8 Q You're telling the jury that it wasn't absolutely
9 necessary to watch the interrogation that you
10 were being asked to render an opinion about? To
11 render an opinion about it?

12 A No.

13 ATTORNEY FREMGEN: That wasn't the answer,
14 Judge. It was -- I believe the answer was not
15 necessary -- absolutely necessary, but helpful. So
16 if you --

17 THE COURT: That's a correct statement.
18 I'm sorry. That's a correct statement of the
19 answer. Why don't you just recast the question.

20 ATTORNEY KRATZ: Sure.

21 Q (By Attorney Kratz) You're telling this jury
22 that it wasn't absolutely necessary to watch that
23 interview to render this opinion about Brendan's
24 suggestibility?

25 ATTORNEY FREMGEN: Judge, again, that's not

1 the -- I believe the answer was, it's not absolutely
2 necessary, but helpful. If that's -- if he wants to
3 rephrase it that way.

4 THE COURT: The question was fairly asked.
5 Go ahead. You may answer.

6 THE WITNESS: Could you read back the
7 question, please?

8 Q I can ask it again if you'd rather. Are you
9 telling this jury that it wasn't absolutely
10 necessary to watch the March 1 interview in order
11 to render this opinion about Brendan's
12 suggestibility?

13 A Not absolutely necessary, no. It was helpful.

14 Q Let's talk about what might have been helpful or
15 omitted from your report. The report that you've
16 rendered, that talks about Brendan's
17 suggestibility, is devoid of any -- any examples
18 where Brendan actually resisted attempts by
19 officers to suggest answers; isn't that true?

20 A That's true.

21 Q In watching that video, Doctor Gordon, don't you
22 remember several instances, in fact, over a dozen
23 instances, where a specific suggestion was
24 presented to Brendan, and Brendan actively
25 resisted? In other words, Brendan said, that

1 didn't happen that way. Do you remember that?

2 A Uh, yes.

3 Q That's not in your report?

4 A No.

5 Q Did you think that was important to include in
6 your report?

7 A Well, obviously, I didn't, or I would have included
8 it.

9 Q Go back to the very first question about
10 including things that help versus don't help your
11 ultimate opinion. Is this one of those
12 circumstances? In other words, when Brendan
13 actively says, no, it didn't happen that way,
14 that doesn't support your opinion about
15 vulnerability to suggestion, does it?

16 A No.

17 Q You said that Brendan's school records weren't
18 provided to you until after you rendered this
19 opinion. Those school records, uh, correct me if
20 I'm wrong, but they include behavioral records,
21 and, um, progress notes, and what are called IEP
22 reports; isn't that right?

23 A That's right.

24 Q Those are notes from school teachers, and school
25 psychologists, and even, on occasion, a parent or

1 two, talking about some problems or some areas
2 that Brendan needed to work on in a school
3 setting; is that right?

4 A True.

5 Q One of the areas that the school record
6 specifically addressed was Brendan's memory; is
7 that true?

8 A True.

9 Q Now, what was the state, at least from the
10 records that you received -- at least up through
11 the fall of 2005, what was the state of Brendan's
12 memory? And are you able, in reviewing those
13 school records, to differentiate between a
14 short-term memory and his long-term memory?

15 I know it was a longer question, and I
16 can break it up, if you need me to. I suspect
17 that you'll be able to answer that.

18 A I could answer that if I -- I reviewed the records.
19 I dog-eared the pages. I took a close look, but --
20 but I didn't commit it to memory.

21 Q All right.

22 A So I -- I could look again if you'd like.

23 Q Brendan, at least from the school records, didn't
24 have the greatest memory in the world; is that --
25 is that fair?

1 A That's fair.

2 Q All right. And whether it was long-term or

3 short-term memory, at least for Brendan, and from

4 a school or a book learning, um, standpoint,

5 Brendan had some challenges or deficits in that

6 area; is that right?

7 A That's true.

8 Q Would you expect, by the way, somebody with a,

9 um -- not only a fourth grade reading level, but

10 somebody with Brendan's memory deficits, to be

11 able to, um, in great detail, uh, remember a --

12 let's say, facts or details of a novel that he

13 read maybe four years ago?

14 A I can't really comment on that because I don't -- if

15 it was a complicated novel, no. But that if -- I

16 don't know the book.

17 Q How about a novel written for adults rather than

18 for kids?

19 A Well, then, I doubt that.

20 Q That just wouldn't seem reasonable to you, would

21 it?

22 A Uh, I don't know.

23 Q The school records don't mention anywhere about

24 suggestibility, do they? In other words, did you

25 see any notations in the records that Brendan

1 was, um, either highly suggestible or influenced
2 by either classmates or other people?

3 A I didn't read the word "suggestible" in the school
4 records.

5 Q Did you read the word "influence" anywhere?

6 A I don't recall.

7 Q That Brendan was easily influenced?

8 A I don't recall that.

9 Q If a school psychologist, Chris Schoenenberger-
10 Gross, who, um, the testimony established, uh,
11 knew Brendan, administered tests directly to
12 Brendan, and did review all of those records, uh,
13 testified that there were no such entries, you
14 wouldn't quarrel with that conclusion, would you?

15 A Uh, I de -- no, I depend on the -- the opinions of
16 school psychologists.

17 Q And school psychologists and teachers and those
18 that meet with Brendan on a more regular or daily
19 basis, at least from a historical standpoint, are
20 probably in a better position to gauge those
21 kinds of things than you, after meeting with him
22 twice; is that right?

23 A No, that's not right, because they didn't administer
24 the same tests and review collateral data that I did.
25 Um, although it's very helpful to have that kind of

1 collateral data from the teachers.

2 There (inaudible) --

3 Q So you don't -- I'm sorry you. You don't know --

4 A -- (inaudible) very important.

5 Q You don't know if those teachers administered IQ

6 tests, do you?

7 A Teachers don't generally administer IQ tests, but

8 they sometimes, uh --

9 Q I'm sorry. The school psychologists. Don't know

10 if she administered IQ tests? I misspoke.

11 A I can look. I don't recall. I have to get them out.

12 It will take me awhile.

13 Q Well, maybe -- I'm going to go on to -- to

14 another question. It isn't -- do you know if the

15 Mishicot School District characterized or

16 categorized Brendan as having any cognitive

17 disability?

18 A I do know that.

19 Q And do you know what that result was?

20 A It was.

21 Q That he did have a cognitive disability?

22 A Well, that he had learning problems. And I'm --

23 and --

24 Q Why don't you look at his 2005 IEP report? There

25 will be some boxes checked there about whether he

1 has a cognitive disability or not. That should
2 be easy to find.

3 A Two thousand five. What date, please?

4 ATTORNEY FREMGEN: Are there, uh --

5 Q (By Attorney Kratz) Probably late --

6 ATTORNEY FREMGEN: Are there exhibits that
7 can actually be used and would --

8 Q (Attorney Kratz) While Mr. Fallon is looking for
9 that, I can go on to a another series of
10 questions. Did you ever talk to this school
11 psychologist, Chris Schoenenberger-Gross?

12 A No.

13 Q Why not?

14 A I felt no need to.

15 Q I'm sorry?

16 A I -- I -- I didn't feel it was necessary.

17 Q Did you ever talk to any of Brendan's teachers?

18 A No. I reviewed their comments. There are some
19 standard scores, now that I find them, if you would
20 like me to go over them, Counsel.

21 Q No. I'm asking for whether or not the school
22 believed Brendan to have a cognitive disability?
23 That was my question.

24 A I can't find that. I just can find the standard
25 scores of some --

1 Q You didn't talk to Chris -- I'm sorry to
2 interrupt you. You didn't talk to Chris
3 Schoenenberger-Gross, or any of his teachers,
4 because you didn't think you needed to. Is that
5 your answer?

6 A I thought this information was, uh, sufficient and
7 helpful to me.

8 Q All right. How about Brendan's parent or
9 parents? Did you talk to Brendan's mother?

10 A No.

11 Q How come?

12 A Uh, for -- I felt that I was able to form a
13 conclusion without, uh, relying on her input.
14 Without relying on her input.

15 Q All right. You didn't think you needed, uh,
16 family opinions as to Brendan's suggestibility,
17 or that -- whether or not he was easily
18 influenced, to render this opinion?

19 A No, I would place more value on opinions of
20 individuals who are teachers and psychologists,
21 because their opinions were made before this court
22 case and more likely to be objective.

23 Q All right. Let's talk about other statements
24 that Brendan made. You said that you reviewed
25 the February 27 interview of officers. You

1 interviewed a May 1, uh, videotape to officers.
2 Were you also made aware, several months before
3 February 27, of statements Brendan made to other
4 family members? Specifically, to one of his
5 cousins, Kayla Avery?

6 A I was made aware of those, but -- but I don't recall
7 it now. I'm sorry.

8 Q Were you aware that in late December, Brendan
9 Dassey told one of his cousins that he saw Teresa
10 pinned up in Steven Avery's house?

11 A I was aware of that, yes.

12 Q You were?

13 A Yes.

14 Q Did you consider that statement, and the fact
15 that it's three months before the, uh, March 1
16 statement? The one where suggestibility is
17 commented upon? The fact that that statement was
18 made three months before, you find that
19 significant or did you include that in your
20 report?

21 A That was included in my report.

22 Q Did you find that significant as to your ultimate
23 opinion as to Brendan's suggestibility?

24 A It could. But sometimes individuals make statements
25 for sensational reasons, including even, uh, um,

1 admitting that they stole the Lindbergh baby, and
2 there were hundreds of people that came forth
3 acknowledging that, so --

4 Q Okay. Well, setting Mr. Lindbergh aside, if you
5 can talk about this case --

6 A That's good.

7 Q -- did you not think that Brendan Dassey's
8 cousin, re -- telling a school counselor and
9 telling the police that Brendan Dassey said that
10 he saw Teresa tied up or pinned up in a house,
11 was relevant as to the March 1 statement, wherein
12 you commented as to his suggestibility? It's a
13 yes or no question.

14 A It -- it's relevant, yes.

15 Q Did you believe that Brendan's statement to his
16 cousin that he saw body parts in a fire at the
17 same time was relevant as to your opinion as to
18 suggestibility?

19 A It's relevant that he said it, yes.

20 Q The fact that Brendan Dassey said, in late
21 December, that he heard Teresa screaming before
22 he went into that house, you believe that's
23 relevant to your opinion as to suggestibility of
24 the March 1 statement?

25 A It's relevant, but I can't make an -- a determination

1 regarding the accuracy of those statements and their
2 reliability thereof, for all the questions you've
3 been asking me in this series.

4 Q Those are statements that are several months --
5 or at least they're alleged to have been made
6 several months -- before this March 1 statement.
7 Do you understand that?

8 A I do.

9 Q Are you also aware of, and did you include,
10 statements that Brendan Dassey made, admissions
11 that Brendan Dassey made, uh, a couple of months
12 after the March 1 statement?

13 A Yes.

14 Q You were aware of statements he made to his
15 mother about the confession? Uh, that is, um,
16 "Why didn't you tell me?" Brendan answered, "I
17 was scared." Do you remember, and did you review
18 that statement made from Brendan to his --

19 A Yeah.

20 Q -- mother?

21 A I'm sorry. I thought you were finished. Yes.

22 Q That Brendan's mother told him, "If you would
23 have told me, Teresa would have still been
24 alive." And Brendan said, "Yeah." Do you
25 remember reviewing that particular telephone

1 call?

2 A I don't remember that telephone call. I'm sorry.

3 Q Do you remember Brendan being asked by his

4 mother, "Did you do all of that stuff to her?"

5 And Brendan replying, "Some of it." Do you

6 remember reviewing that particular statement?

7 A I believe so.

8 Q By the way, are any of those statements, made

9 months after the March 1 statement, do you

10 believe to be relevant to your conclusion as to

11 suggestibility, at least as it relates to the

12 March 1 statement?

13 A It may -- it's relevant to consider. Whether it --

14 It's relevant to consider.

15 Q It would be relevant if Brendan Dassey apologized

16 to the victim's family, in his words, "for what I

17 did to her." Would that be a relevant statement

18 as to suggestibility of the March 1 statement?

19 A It would be something to consider.

20 Q Did you consider it?

21 A Yes.

22 Q And despite all of those statements, despite the

23 statements months before and months after,

24 consistent with what he told the police, you

25 still believe that Brendan was vulnerable to

1 suggestibility; is that true?

2 A Absolutely.

3 Q Doctor, my client -- or my colleague --

4 Mr. Fallon's going to show you Exhibit 219.

5 First of all, tell us what that is and what the

6 date on the top of that report is?

7 A What that is, it's evaluation report for Brendan

8 Dassey, determination of eligibility for special

9 education dated September 29, 2005.

10 Q Does that particular form have a check box or a

11 place where the school can determine whether or

12 not, in their opinion, Brendan has a cognitive

13 disability?

14 A It has a place for that.

15 Q And is that box checked on Brendan's form?

16 A No. What is checked is specific order of disability.

17 Q Some speech and language issues --

18 A Specific learning disability. And the other one was

19 speech or language impairment. Those are the two

20 that were checked.

21 Q Now, Brendan's statement to his cousin about

22 seeing Teresa tied up or pinned up in the house,

23 seeing body parts in the fire, and hearing Teresa

24 screaming, and Brendan's statements, uh, months

25 afterwards to his mother, did those impact or did

1 you consider those statements when Brendan told
2 you he was scared he was going to be arrested?

3 A I don't know, because I don't know in what order I
4 received that information or reviewed it, at which
5 time I interviewed him. After the fact, um, it could
6 be related.

7 Q Okay. Doctor Gordon, the concept of false
8 confessions, we -- we -- we heard about that
9 as -- as set aside or as different from
10 suggestibility. I want to ask you just a couple
11 of questions about that.

12 You're aware, in your, um, work in this
13 area, of several studies that deal with false
14 confessions; isn't that true?

15 A Yes.

16 Q A couple of the preeminent authors in this area
17 are two individuals in California named, uh,
18 Mr. -- is it Drezin or Drizin, and Leo; is that
19 correct?

20 A That's right.

21 Q And another is a person by the name of Brett
22 Trowbridge. You're familiar with their work?

23 A Yes.

24 Q Is it fair --

25 A Trowbridge, no. I -- I'm thinking of that name.

1 There must be someone else. Or the same -- I printed
2 up, last night, regarding, uh, sexually violent
3 person and sex offender commitment, uh, so --
4 Q I -- I'll limit my inquiry, then, to what you are
5 familiar with. Would be the Drizin -- is it
6 Drizin or Drezin?
7 A That I don't know.
8 Q Drizin and Leo. D-r-i-z-i-n. You understand?
9 A Yes.
10 Q You read that name at least? And in their study,
11 which is, uh, in fact, one of the preeminent
12 works in false confession, you'd agree with that,
13 wouldn't you?
14 A They've conducted many studies, so I don't know which
15 one you're referring to.
16 Q Mr. Drizin and Leo indicate, and do you agree
17 with this statement, that most false
18 confessions -- now, we're getting into the area
19 of false confessions versus suggestibility -- are
20 the result of, um, tactics by police which are so
21 impermissible, most of which include physical
22 violence, like beatings, is that what you find?
23 A That's not my reading. Well, we need to back up.
24 There are -- they are not the only authorities in the
25 field.

1 Secondly, um, not only they -- are they
2 not the only authorities in the field, but they
3 do talk about extreme torture as a way to get
4 false confessions. There are chapters that
5 they've done and studies on that. But they've
6 also published, extensively, like I said, even on
7 things such as mild pressure, criticism, so --
8 Q How about we do this, if you can't answer yes or
9 no, then you can let me know, all right? If --
10 if you can, Doctor, I'd appreciate it. Are you
11 familiar with Mr. Drizin and Leo's proposition
12 that most false confessions are the result of
13 such extreme police conduct, impermissible
14 conduct, that can, and often does, include
15 physical violence or beatings of suspects?
16 A Yes.
17 Q Familiar that their studies indicate that most
18 false confessions are the result of very long,
19 sometimes, uh, interrogations that last into the
20 days, rather than just, uh, an hour, two or even
21 three hours. You're familiar with that?
22 A True.
23 Q Now, in our case, that is, in the March 1, um,
24 videotape of Mr., um, Dassey -- Mr. Fallon will
25 take care of that for you.

1 A Thank you, sir.

2 Q Brendan's first admissions, that is, his first
3 admissions of criminal involvement in this case,
4 don't happen at the three-hour or the four-hour
5 mark, but they happen, really, within and right
6 around the one-hour mark. Is that a fair, uh,
7 recollection of --

8 A Yes.

9 Q -- your review?

10 A Yes.

11 Q So that, at least as it relates to false
12 confessions, is extremely inconsistent with Mr.
13 Drizin and Leo's findings. Uh, that is, it being
14 within an hour or two, rather than six, eight
15 hours, twelve hours, days of confession. That's
16 fair, isn't it?

17 A I can't answer that. Not the way it was phrased.

18 Q You told this jury that you were not familiar
19 with the works of, uh, Brett Trowbridge when he
20 deals with the three different types of false
21 confessions?

22 A Oh. Um --

23 Q If I asked you questions about that, might that
24 refresh your -- your -- your memory?

25 A I think others have characterized it in those three

1 categories as well. Uh, so --

2 Q Let me ask you about that. The first, um, area
3 of false confessions, uh, at least Mr. Trowbridge
4 calls a voluntary confession, these are the
5 people that come off the street and confess to a
6 notorious murder that they didn't do.

7 The JonBenet Ramsey fellow, who comes
8 forward. That's the first category. You're
9 familiar with that first category; is that right?

10 A Yes.

11 Q The second is something Mr. Trowbridge calls
12 coerced compliant. That is, that an individual
13 confesses to a crime for a perceived gain.
14 Whether it's real or just perceived, that's why
15 they confess to a crime that may not be true.
16 You agree with that?

17 A Coerced compliant can be for more than just that
18 reason. But it -- it's when it's coerced and they
19 comply and give a false statement.

20 Q All right. But they do it for a gain? That is,
21 uh, something, um -- something that they perceive
22 as of benefit to them? You'd agree with that
23 second component, wouldn't you?

24 A Yep. Many -- there are many different things that
25 they can benefit from.

1 Q And the third that Mr. Trowbridge, uh, talks
2 about, and maybe Dr. Trowbridge, uh, is something
3 called, coerced internalized. That is, that they
4 are convinced, or they, in fact, convince
5 themselves, that their memory is so bad, uh, that
6 either due to intoxication, mental illness, or
7 something else, uh, that they actually did it.
8 They believe at the end of the interview that
9 they did it?

10 A Or brainwashing. You could think of Patty Hearst,
11 for example.

12 Q Okay. Now, with that backdrop, or with that
13 understanding of the three kinds -- or recognized
14 kinds of false confessions, are you familiar with
15 any category of false confession where an
16 individual confesses just to get themselves into
17 trouble? Are you familiar with -- with that as a
18 recognized area of false confession?

19 A Unless it would be voluntary, uh -- I mean, some
20 people do things for notoriety, and knowing of the
21 consequences they -- they -- they do that. It might
22 be kind of hard to understand, but it's -- it's
23 not -- it -- it's done.

24 Q Doctor, I'm going to try to -- actually, I'm
25 going to skip over some things.

1 ATTORNEY KRATZ: And, Judge, with the
2 indulgence of the Court, if I promise to be done
3 by 12:15, then can I finish my -- my cross? Uh,
4 promise, Judge.

5 THE COURT: All right. Go ahead.

6 ATTORNEY KRATZ: Thank you. Then I don't
7 have to come back after -- after the lunch hour.

8 Q (By Attorney Kratz) You said, uh, Dr. Gordon,
9 that the -- one of the areas that you considered
10 in forming your opinion was the circumstances,
11 themselves, that surrounded this interrogation;
12 is that right?

13 A That's -- those are some of the factors. Yes.

14 Q Now, you're not an expert, and I think on a
15 previous occasion you admitted you were not an
16 expert, in interrogation strategy or, uh, in
17 circumstances that surround the interrogative
18 process; is that right?

19 A Uh, that is not my area of specialization, but I am
20 knowledgeable, or I have some knowledge of it.

21 Q Well, that's good. Then, I can ask you, isn't it
22 true that most confessions, at least when a
23 confession is obtained, uh, has stages to it? In
24 other words, uh, suspects typically, and almost
25 universally, start with a denial? They start as

1 denying their involvement in any crime? That's
2 true, isn't it?

3 A True.

4 Q They move towards some version of events that
5 substantially minimize their involvement.
6 There's a minimization component, uh, at least as
7 they move towards confession?

8 A That's common.

9 Q True? And third, then, there is details, or at
10 least some, um, degree of detail, that is,
11 ultimately, provided or given, again, assuming
12 the truthfulness, uh, of the confession. We're
13 not talking about false confessions. We're
14 talking about those that actually happen. Is
15 that all true?

16 A That's common.

17 Q You're aware, uh, Dr. Gordon, that in the
18 interrogative process, it's important for law
19 enforcement officers to not only consider the
20 spoken word, that is, the, um, information or the
21 amount of information that's obtained, um, but
22 they've got a responsibility to look at the
23 quality of the statement? That is, is it
24 something that can be or ought to be believed?
25 Would you agree with that statement?

1 A Yes.

2 Q Again, that process law enforcement officers
3 often look at whether or not there's physical
4 evidence that would corroborate what it is that
5 the suspect is telling them? That you
6 understand, don't you?

7 A Physical evidence displayed by the suspect during the
8 interview?

9 Q That there's physical evidence available during
10 the investigation that corroborates what the
11 suspect is saying? That that's a factor that
12 they consider when deciding the quality of what
13 it is that the person says?

14 A True.

15 Q They also consider information that the general
16 public doesn't know yet? That is, that's
17 purposely withheld from the general public. That
18 you agree with?

19 A Yes.

20 Q And, lastly, and, perhaps, most importantly, law
21 enforcement officers consider what they don't
22 even know yet? In other words, when a suspect
23 tells them something, and that suspect gives
24 sufficient detail that they can later
25 corroborate, the fact that they -- that the cops

1 didn't even know it yet, goes a long way towards
2 considering the quality of what they're being
3 told. That's fair, isn't it?

4 A Yeah, that's true.

5 Q Let me talk about this Gudjonsson Suggestibility
6 Scale. You are going to need to pull out the,
7 uh, Gudjonsson test, because I have some
8 questions for you, which was developed, you said,
9 by a gentleman by the name of Gudjonsson, who
10 started in Iceland, moved to England, and, in
11 fact, did most of his, uh, study and most of his
12 work continuous to, as I understand, in Great
13 Britain; is that right?

14 A London, precisely.

15 Q All right. Now the purpose of this test, as I
16 understand, is, although you tell the suspect, in
17 this case you told Brendan, it was a memory test,
18 this isn't a memory test at all, is it?

19 A No. Well, it's not design -- designed to be a memory
20 test. Although, you do ask them to respond with --
21 by restating the -- the story. And, so, you can, to
22 some degree, assess their -- informally, their --
23 their memory. But it's not designed to be a memory
24 test. That's true.

25 Q You've got the -- the test in front of you, as

1 well as the scoring sheet?

2 A Yes.

3 Q Thank you. So the jury understands the basic
4 premise of this test, as you read them a story,
5 you read Brendan a story, and you first asked if
6 they can recall, something called immediate
7 recall, if they can recall the facts that was
8 read to them; is that correct?

9 A That's correct.

10 Q The test, itself, was developed, uh, you said, by
11 this person from Iceland, later going to England.
12 Um, the test that you provided to us, that is, to
13 the defense, was this, the very story, the very
14 test that was administered to Brendan?

15 A Yes.

16 Q Was it on the 3rd or the 10th of November?

17 A I don't recall. I'm sorry.

18 Q That's fine. If you'd, uh, be so kind, uh,
19 Doctor, to read -- I'm not going to have you read
20 the whole story. But I want you to read the
21 first sentence of that story to the jury so they
22 can get a flavor for how, uh, Brendan was read
23 this particular story. Think you'd be able to do
24 that for us?

25 A Well, if that's a part of the court order for me to

1 do that, then I -- I understand it is?

2 THE COURT: It is.

3 A (As read) "Anna Thompson of South Croydon was on
4 holiday in Spain when she was held up outside her
5 ho -- outside of her ho -- outside her hotel, and
6 robbed of her handbag, which contained 50 pounds" --
7 and I'd say 50 dollars -- "worth of traveler's
8 checks, and her passport."

9 Q You say what? Fifty dollars?

10 A Yes.

11 Q What do you mean you say 50 dollars?

12 A When I read it. That -- there is a Engl -- there's
13 American version of this, too, but it's not as well
14 normed of the story.

15 Q Well, that -- my first series of questions, first
16 of all, was whether or not Brendan even
17 understood what it meant to be on holiday? Do
18 you know if Brendan knew what being on holiday
19 meant?

20 A I don't know, because that wasn't stated in the
21 memory portion that he repeated back to me, um,
22 immediately after I read him the story.

23 Q Now, the memory portion that he repeated back to
24 you, are you reading from something?

25 A Yes, I am.

1 Q What is that?

2 A It's what I wrote down as -- to try to -- as my best
3 to write as fast as I could to write down what he was
4 telling me at the time.

5 Q Did you send that to -- to me? To the defense?

6 A No.

7 Q Wasn't that asked for, Doctor?

8 A Um, yes, it was. And I apologize.

9 Q So we asked for your file. You're reading from
10 that now, and that's something you didn't provide
11 the State.

12 A I might have provide -- I might have provided it to
13 Mr., uh, Fremgen, and he may not have provided it to
14 you. I don't know.

15 Q All right. I'll move on.

16 ATTORNEY KRATZ: Uh, Judge, I would at
17 least note I'd like to make a record at the end
18 of this, but I'll move on at this point.

19 Q (By Attorney Kratz) Doctor, the -- the issues of
20 "on holiday," uh, you said that, uh, you didn't
21 know whether or not Brendan even understood that.
22 When it indicates that this Anna Thompson woman
23 from South Croydon -- by the way, where is South
24 Croydon?

25 A I don't know. It's in -- I assume it's in England.

1 Q Do you think Brendan knows where South Croydon
2 is?
3 A If I don't know, I'm sure he doesn't.
4 Q Doesn't say Cincinnati or it doesn't say
5 something where somebody from the upper midwest
6 might actually understand this? Doesn't say
7 that, does it?
8 A It says --
9 ATTORNEY FREMGEN: Objection, as to whether
10 someone from the upper midwest might understand.
11 THE COURT: The objection is sustained.
12 ATTORNEY KRATZ: I'll -- I'll move on.
13 Q (By Attorney Kratz) When it says that "contained
14 50 pounds worth of traveler's checks," is it your
15 testimony in this case that, kind of on your own,
16 you just changed the, uh -- the story?
17 A I changed that one word.
18 Q Okay. Do you know how the changing of the --
19 that one word, uh, affects the results or affects
20 the norms that you're later going to ask this
21 jury to believe?
22 A I don't believe that one word of, uh, seventy has any
23 appreciable --
24 Q How do you know that?
25 A Uh, I said I believe. There's a difference. I don't

1 know that.

2 Q And isn't the whole point of norms and
3 administration of these kind of tests, do it the
4 same way every time and with every suspect?

5 A Yes.

6 Q After reading this story about this Anna Thompson
7 woman from England, um, Brendan is then asked to
8 recall the story and to provide you with, um, the
9 details that he can remember; is that right?

10 A That's right.

11 Q Now, is there a -- a scoring system for that? In
12 other words, is he given a particular score or is
13 that available, even, in this test?

14 A I don't believe so.

15 Q The bottom of the first page where it says,
16 immediate recall, on the test, it looks like a
17 score. Memory recall, maximum of 40. Can you
18 tell us what that means?

19 A I stand corrected. It -- it could be scored.

20 Q All right. So whether Brendan even knew what the
21 heck you were talking about with this lady from
22 England, could have been scored by you; is that
23 right?

24 A That -- that could have been scored, but there are no
25 norms for those.

1 Q All right. Could have been scored? You didn't
2 do it?

3 A That's true.

4 Q After reading this story, Brendan is then
5 provided what are called leading questions. That
6 is, questions not only leading, but, also, have
7 false information within them. That's true,
8 isn't it?

9 A That's true.

10 Q In fact, the information is what's known as false
11 alternatives. I'll give an example. It's not in
12 here, but it's a good example. Uh, if this Anna
13 Thompson woman wasn't wearing a hat, one of the
14 questions might be, Brendan, was she wearing a
15 red or a blue hat? That's what's called a false
16 alternative question that presupposes false
17 information. That's true, isn't it?

18 A True. True.

19 Q And, then, if Brendan says, she was wearing a red
20 hat -- he guesses, if he says she was wearing a
21 red hat -- he'd get a point or either a checkmark
22 on something called "yield." That is that he
23 would be yielding to that false suggestion; is
24 that right?

25 A True.

1 Q I'm going to skip ahead. We're going to go back
2 to -- to some examples here. But halfway through
3 this test, you express disappointment. In other
4 words, you fold your arms, or something to that a
5 point, tell Brendan, I'm disappointed in your
6 answers. You can do better this time. Uh, I'm
7 going to ask you the same question.

8 Was she wearing a red or a blue hat?
9 And this time, if Brendan, knowing he said red
10 the first time, says she's wearing a blue hat,
11 you give him a checkmark for shifting. That he
12 shifted his answer. That's kind of accurate,
13 isn't it?

14 A That's accurate for one of -- one type of question.

15 Q All right. Importantly, Doctor, tell this jury,
16 if Brendan gives you the right answer the second
17 time, the correct answer, if Brendan, the second
18 question, when you say, I'm disappointed, you
19 gave the wrong answer, and Brendan tells you, you
20 know what, Doctor, she wasn't wearing a hat. How
21 would you score that?

22 A As shift.

23 Q So you're telling this jury that even when
24 Brendan corrects himself, even when he gives you
25 the right answer the second time, he gets marked

1 off, or something as to your scale then gets
2 added against him as a shift?

3 A Because it shows he's suggestible, yes.

4 Q What happens, by the way, and how is this scored
5 if Brendan was provided with a true answer? In
6 other words, if Brendan was asked, did the lady
7 have a hat or not? And Brendan said, no, I
8 didn't have a hat, are there questions like that
9 in this test?

10 A Repeat it again, please?

11 Q If Brendan was asked a question that contained a
12 true answer, something that was really part of
13 this story, and asked a question like, did the
14 woman have a hat on or not? How is that scored?
15 How is that kind of question scored on --

16 A That is not -- I'm sorry. Was it -- you finished?
17 Uh, it was -- it's not scored as a yield, but it's
18 scored as a shift. If -- let me think of an example.

19 If a person has the question, uh, did
20 you -- was anyone walking outside the building?
21 And there someone was. And they said, yes, then
22 it wouldn't be scored as a -- a leading question.
23 Or -- or what -- or did you see anyone outside?
24 But, then, if they later on change that answer,
25 then, even though it was a correct, and not a

1 leading question to start with, it wouldn't be
2 scored as a shift later on. You look puzzled.

3 Q I am puzzled, because if he answers it correctly,
4 and you fold your arms and you tell this person
5 to change his answer, and he does, how does that
6 have anything to do with this jury as to whether
7 or not he's suggestible?

8 A It shows that he responds to pressure and changes his
9 answers, whether they be correct or not. It shows he
10 responds to -- to, uh, pressure.

11 Q He responds to his psychologist folding his arms
12 and saying, I'm disappointed in you, Brendan, you
13 should change your answer. Wouldn't you expect
14 Brendan to change his answers?

15 A I think I'd expect Brendan to because of all the
16 other factors in this case. Uh, if I -- if he
17 was -- if he had a advanced degree, had -- was a
18 lawyer, had contact with the law, uh, he was
19 independent, he was outgoing, he was, uh, risk-
20 taking, he had a high IQ, uh, he had no learn --
21 history of learning problems, then it would surprise
22 me.

23 Q But you didn't consider, during this
24 interrogation, what this jury has to consider,
25 that Brendan was able to resist suggestibility?

1 You used this test instead; isn't that true?

2 A I used this standardized test, which is --

3 Q Irrespective of whether he actually, in real
4 life, was able to resist suggestibility? Is that
5 what you're telling this jury?

6 A I reviewed what he did in real life, and he was -- he
7 changed his responses in response to both leading and
8 pressure.

9 Q But in real life he wasn't provided false
10 alternatives. He was asked, did you kill her or
11 didn't you? And he said, yeah, I killed her.
12 That's different than this Gudjonsson test, isn't
13 it? Because this presupposes false alternatives.

14 ATTORNEY FREMGEN: I would object to --

15 Q Isn't that true, Doctor?

16 ATTORNEY FREMGEN: Judge, I object to
17 the form of question. I don't think that was a
18 false alternative.

19 THE COURT: Uh, I'm going to overrule the
20 objection. This is cross-examination. It's wide.
21 It's broad. I think that's -- I think that
22 question's, uh, within the realm of it. Go ahead.

23 Q (By Attorney Kratz) When provided with a true
24 answer, and Brendan given an opportunity to adopt
25 that answer, isn't that different than the

1 Gudjonsson test? That's my question, Doctor.

2 A It's different than part of the Gudjonsson test
3 because only a minority of the questions on the
4 Gudjonsson test are false altern -- alternative
5 questions.

6 Q Only a what?

7 A A sm -- a small percentage of them.

8 Q A small -- 15 out of 20 are false alternative
9 questions.

10 A That's not correct, Your Honor. Uh, Counsel.

11 Q Okay. How many -- how many out of 20 are false
12 alternatives?

13 A Um, I can count. One, two, three, four, five. Five
14 out of twenty questions. One-fourth.

15 Q You said that this test -- or at least one of the
16 things it tests for is memory; is that right?

17 A Well, it assesses memory, but it's not really a
18 memory test. It's not -- that's not the purpose of
19 it.

20 Q Now, Doctor, you're aware of different kinds of
21 memory? Uh, that is, how individuals remember
22 things? How they process and remember
23 information?

24 A Sure.

25 Q You're aware of something that is called, uh,

1 semantic memory? Or what my teachers used to
2 call book learning? Uh, that they can remember
3 things that are read to them or things they see
4 in a classroom?

5 A Okay.

6 Q And that's different than something called event
7 memory or autobiographical memory? Things that
8 people actually live through. You understand
9 that people remember those things differently;
10 isn't that right?

11 A I understand they're -- they're different.

12 Q Now, reading a story about some lady from
13 England, what kind of memory is involved there?
14 Is it the book learning kind of memory? Or
15 something that Brendan actually lived through?

16 A It's -- it's not experiential learn -- uh, memory.

17 Q All right. You're familiar, Doctor, with studies
18 that show that individuals, especially, uh, with
19 low average IQ's, do significantly better with
20 event memory? That is, with things they've
21 actually lived through, rather than parroting
22 back or recalling things that are read to them?
23 You're aware of that?

24 A I'm not aware of that, but that doesn't surprise me.
25 I mean, if a person has learning problems, uh, it's

1 hard to understand more abstract things than things
2 they experience.

3 Q Well, importantly, police interrogations have
4 everything to do with event memory, things that
5 people have actually lived through, when asked
6 about, uh, whether or not they were involved in
7 something. Uh, they can use that kind of memory;
8 isn't that true?

9 A True.

10 Q Event memory? And people with -- or at least
11 that are asked to call upon their event memory of
12 higher accuracy, less tendency to acquiesce,
13 which is called yield, uh, and are more resistive
14 to suggestion, less chance of shifting, you'd
15 agree with those propositions, wouldn't you?

16 A That question went by too fast for me to agree or
17 disagree, Counsel.

18 Q I'm sorry?

19 A You went -- You went too fast for me.

20 Q People with low -- Brendan would be better at
21 event memory than with semantic or book learning
22 kinds of memory. Would you agree with that?

23 A For that particular factor, yes.

24 Q Since I have two minutes I have to complete my
25 examination with this doctor, would you agree

1 that the norms, that is, uh, who the Gudjonsson
2 test is compared against, um, do not necessarily
3 reflect the population of -- of people like
4 Brendan Dassey? In other words, uh, they aren't
5 compared against other people who are currently
6 being charged with homicide; is that true?

7 A They're not being -- yes.

8 Q And, so, whether these are some students in
9 England at Oxford, or something, who took this
10 particular test, uh, they -- when told to change
11 their answers, they may be more reluctant to do
12 that, than somebody whose expert, whose doctor
13 told him, Brendan, I want you to change your
14 answer, that's fair, isn't it?

15 A I don't know.

16 Q Finally, the more suggestible a person is, the
17 less detail they're able to provide? That is,
18 the less, um, recall they may have about a
19 particular event; is that true?

20 A Yes.

21 Q Conversely, then, the amount or the quality of
22 information, the quality of detail that Brendan
23 could provide, in fact, doesn't support the
24 proposition that this statement was the product
25 of suggestibility, does it?

1 A Read that back, please. Or repeat it.

2 Q Sure. The quality, that is, the detail, that
3 Brendan was able to provide, in fact, does not
4 support your conclusion. Is inconsistent with
5 your conclusion as to suggestibility; isn't that
6 true?

7 A If that is considered in isolation, that's -- that's
8 true. But there are other factors, obviously,
9 involved.

10 Q I appreciate it very much. Thank you.

11 ATTORNEY KRATZ: Thank you, Judge.

12 THE WITNESS: You're welcome.

13 THE COURT: All right. We're going to
14 adjourn until 1:30. Um, you may step down. I'll
15 remind the jury, don't talk about this or anything
16 related to this.

17 (Jurors out at 12:15 p.m.)

18 ATTORNEY KRATZ: Judge, could I just put
19 that one thing on the record that I wanted to --

20 THE COURT: Oh, go ahead. All right.

21 ATTORNEY KRATZ: As we know, Dr., uh,
22 Gordon referred to some of his notes that I had
23 specifically --

24 THE COURT: You can -- you can step
25 down.

1 ATTORNEY KRATZ: -- I had specifically
2 asked for and were not provided to me. I would
3 ask that during the break, perhaps Mr. Fremgen go
4 through with Dr. Gordon, his file to make sure
5 that was the only thing that wasn't provided to
6 me as ordered and as requested.

7 I'll tell the Court, if that's the only
8 thing I didn't get, I'm not asking for any
9 sanction order. I'm sure it was an oversight.

10 But, uh, at least Mr. Fremgen probably
11 should go through that file and make sure I got
12 the rest of that information.

13 THE COURT: Mr. Fremgen? Do that.

14 ATTORNEY FREMGEN: All right.

15 THE COURT: All right? Uh, five minutes
16 in chambers, please.

17 (Recess had at 12:18 p.m.)

18 (Reconvened at 1:30 p.m. Jury in)

19 THE COURT: Mr. Fremgen, you may proceed.

20 ATTORNEY FREMGEN: Thank you, Judge.

21 THE COURT: You're welcome.

22 **REDIRECT EXAMINATION**

23 BY ATTORNEY FREMGEN:

24 Q The, um, prosecutor asked you a couple of
25 questions I want to follow up on from before.

1 Uh, Doctor, one question was asked of you whether
2 you're familiar with any other psychologists in
3 Wisconsin who have, uh, performed similar
4 evaluations and testified similarly. You
5 indicated, no?

6 A That's correct.

7 Q Are you aware of any other jurisdictions where
8 that might have occurred?

9 A Yes. And other states.

10 Q In other states. Your report, would it be fair
11 to call it a summary of all of your observations,
12 evaluation and tests?

13 A Yes.

14 Q Did you include in that summary report -- and,
15 again, I believe it's a five-page report? Do you
16 recall that?

17 A I --

18 Q And, actually, you know what I'll do? I'll mark
19 that as an exhibit if the State has no objection.

20 ATTORNEY KRATZ: No, I think it's
21 appropriate, Judge.

22 (Exhibit 231 marked for identification)

23 THE COURT: All right. Is that Exhibit 230
24 then?

25 THE CLERK: Two thirty-one.

1 THE COURT: Two thirty-one?

2 Q (By Attorney Fremgen) I'm going to show you what
3 has been marked Exhibit 231. Is this the report
4 that was what you were talking about -- or, do
5 you believe this is the report that was discussed
6 on cross-examination?

7 A Yes.

8 Q Now, one question of you, Doctor, was whether or
9 not you included all of the, uh, questions and
10 answers from the 16-PF in that summary report;
11 correct?

12 A Did it include all of the responses to all the
13 questions?

14 Q Correct.

15 A No.

16 Q Why not?

17 A It would not have helped with the interpretation and,
18 secondly, it would have been very unwieldy to include
19 all reports. I mean, all questions and responses.
20 And it would have been a violation of my ethics.

21 Q Well, what do you mean by "unwieldy?" Do you
22 mean that it would have been a 50- or 60-page
23 report?

24 A Oh, at least that, if I would have included an
25 interpretation of -- of each question for each item

1 on all of the personality tests.

2 Q And, again, that would -- you know, if I would go
3 further and ask you the same with the MMPI, if
4 you included all 478 questions and responses, how
5 would that have affected or impacted on the --
6 the summary report in and of itself?

7 ATTORNEY KRATZ: Judge, I'm going to
8 interpose an objection. I think my question was are
9 those items that were contrary or contradictory to
10 his opinion, why they weren't included. I didn't
11 ask this doctor whether he included every answer to
12 every test.

13 THE COURT: That's my recollection of the
14 question, Counsel.

15 Q (By Attorney Fremgen) Doctor, is it normal
16 procedure by a forensic, or, for that matter,
17 clinical, psychologist to include the actual
18 question and answers of tests in a summary
19 report?

20 A Absolutely not.

21 Q Why not?

22 A Well, like I -- I said, it's a -- I -- I -- when you
23 purchase these tests, you -- you agree that you have
24 a certain level of training, and I document that
25 for -- so you even can buy it. And, then, there's

1 contractually, you agree that you won't disseminate
2 this to anyone other than psychologists.

3 Uh, secondly, by extracting individual
4 questions, it -- it -- it would not -- it would
5 be misleading. It would not provide for a solid
6 report.

7 Q How do you view a summary report?

8 A I do my best to summarize all of the objective data
9 that's relevant to a given case so that the
10 conclusions, uh, in my report could be understood,
11 based on what precedes it in the report.

12 Q Do you believe that Exhibit 231, essentially,
13 complies with your understanding of what should
14 be in a summary report?

15 A Yes.

16 Q Upon cross-examination, an issue was brought up
17 about, um, anxiety; correct?

18 A Correct.

19 Q Uh, observations of anxiety and, um, whether
20 there was -- may have been -- I -- I believe it
21 was the 16-PF, or could have been the, uh -- I'm
22 sorry, I believe it was the 16-PF, some
23 observation on a question that deals with
24 anxiety; correct?

25 A Correct.

1 Q Did you, in your mental status evaluation, ever
2 observe what you believed, based upon your, uh,
3 training and experience as a clinical, as well as
4 forensic psychologist, anxiety when you spoke
5 with Brendan Dassey?

6 A Yes.

7 Q So even if it's not in a test, could you still
8 discern whether someone might be exhibiting
9 anxiety?

10 A Even if it's not in a test, uh, I could form some
11 conclusions regarding anxiety, uh, just from a
12 interview.

13 Q The, uh, MMPI-A that you testified about, uh, you
14 indicated you weren't sure, or can't recall, if
15 you actually asked the questions and circled the
16 answers, or whether Brendan actually circled the
17 answers on the score sheet; correct?

18 A Correct.

19 Q That's the 478 questions you had talked about?

20 A True.

21 Q Are the results interpreted by you?

22 A They're interpreted by me and hypothesis come from a
23 computer, initially.

24 Q Let me ask you this, Doctor: When you -- after
25 you complete the test, where do you send it? Or

1 do you send it somewhere?

2 A I, or one of my assistants, hand enter the responses
3 into a computer, and it electronically is sent to,
4 uh, Minnesota, and a report is immediately generated,
5 including the scores, and sent back to my --

6 Q And you -- when you receive that, you receive,
7 basically, the -- the scores, and I believe it
8 was Exhibit, uh -- I'm showing you what's been
9 marked as Exhibit 229? And, again, this is what
10 the results would show from the MMPI-A?

11 A Those are four scales contained on the MMPI-A.

12 Q So four of the 70 scales you had discussed on
13 cross-examination were on this exhibit; correct?

14 A Correct.

15 Q But what you receive is the number, where it says
16 score; is that correct?

17 A Correct.

18 Q And percentile, you receive that also from the
19 manufacturer who -- who tallies up the answers
20 and provides you with a computer-generated score?

21 A No, I -- I personally know from charts and books and
22 how to look up what particular T scores -- the, uh,
23 72, for example, and I know how to convert that into
24 the percentile. So I do that on my own.

25 Q So the score, itself, is generated by the

1 computer and you provided perc -- a percentile to
2 that?

3 A True.

4 Q Are all 70 scales that you testified about on
5 cross-examination pertinent, in your opinion, as
6 to the issue of suggestibility?

7 A No.

8 Q Are the scales on Exhibit 229 that you've
9 included from the MMPI, in your opinion,
10 pertinent in reaching your conclusion as to
11 suggestibility?

12 A Are the -- what -- what's Exhibit 229?

13 Q I'm sorry. The one on the screen. The MMPI?

14 A Three of four are pertinent. I -- I listed the high
15 scores from the -- high -- high scores from the
16 clinical scales, and the basic clinical profile, and
17 the high scores from the additional scales beyond the
18 basic ten.

19 Q Why are these three pertinent, where the other 70
20 are not pertinent, in your opinion, in reaching
21 the conclusions about suggestibility?

22 A My review of the other scales sh -- was -- shows that
23 those scores were either not consistent with, or
24 consistent with, uh -- they weren't related to
25 whether a person was suggestible or not. So I -- I

1 didn't include them.

2 Q Is that information that you incorporate from
3 your research, uh -- or from the research from
4 Gudjonsson?

5 A Gudjonsson and others.

6 Q In totality, the -- all the tests and inventories
7 that you've used, are these considered objective
8 inventories and tests or subjective?

9 A Objective.

10 Q Why is it that you want objective tests in
11 addition to your clinical judgment?

12 A Objective tests are based on research from a variety
13 of institutions with thousands of subjects and result
14 in reliable scores that are the same scores obtained
15 over and over. And by obtaining the same score over
16 and over on a given scale, then you can see if
17 they're valid. That is, if those scores are
18 connected to other variables, such as, uh,
19 depression, such as, whatever the case might be. And
20 that's how those scales are obtained, based on -- on,
21 uh, well-accepted research that's been taught to me
22 in 197 -- early '70's, and for that as well, up until
23 now.

24 Q And getting back to the objective nature of these
25 tests, they're actually -- would you -- well, do

1 you actually make the test yourself or does
2 somebody else make them?

3 A I don't make the tests. That's -- someone else
4 take -- has made the test.

5 Q And you've testified previously that you've, uh,
6 performed thousands of evaluations before?
7 Clinical as well as forensic?

8 A True.

9 Q And you use objective tests in those types of
10 evaluations as well?

11 A I only use objective tests, uh, since 1978. I --
12 I -- my review of the literature suggests that, uh,
13 projective tests are not useful.

14 Q So you use objective tests along with your own
15 clinical analysis and judgment?

16 A Yes.

17 Q And, at times in the past, when you've done
18 evaluations, um, using objective tests, have the
19 results always been consistent?

20 A No.

21 Q Were your results in this case consistent?

22 A All of the personality tests were consistent, as were
23 the IQ tests, which were consistent with my
24 conclusion -- my conclusion.

25 Q What significance would you place on the

1 consistency of the objective tests with your
2 conclusion?

3 A It's highly unusual that that occurs and it provided
4 me with more competence in the interpretation and
5 conclusions that I reached regards -- regarding the
6 present case.

7 Q On cross-examination, the prosecutor asked you
8 about the March 1, 2006, video; correct?

9 A Correct.

10 Q You indicated that was not absolutely necessary,
11 but was helpful, in your determination of
12 suggestibility; correct?

13 A True.

14 Q Why was it that you feel it was not absolutely
15 necessary in making that determination?

16 A Because one can rely on interview and objective tests
17 that I use to assess whether a person has
18 psychological characteristics that cause them to be
19 susceptible to suggestibility and giving confessions
20 when, uh, there's pressure applied.

21 Q What -- what was helpful then, about the video
22 once you made your initial opinion about
23 suggestibility?

24 A It confirmed that, in various cases, uh, yield and
25 shift-type of questions, uh, and different ways to

1 obtain a confession were -- were evident.

2 Q Well, and let me just follow up on the yield and

3 shift, um, answer. The -- the prosecutor, in

4 cross-examination, mentioned that you left out of

5 your report examples of times Brendan resisted

6 suggestion; correct?

7 A Correct.

8 Q And you said you did?

9 A I did.

10 Q And -- and you -- I think you also confirmed that

11 you noted times on the tape that he resisted

12 suggestion; correct?

13 A True.

14 Q Did you also note times or examples of Brendan,

15 initially, resisted, but later changed, based

16 upon questioning?

17 A True.

18 Q So both occurred on that video; correct?

19 A Yes, sir.

20 Q Is this an example of that shift or yield that

21 you were discussing in regards to the Gudjonsson

22 Suscept -- Suggestibility Scale?

23 A The Gudjonsson shift and suggestive shift, in, excuse

24 me, response to yield are similar to which -- that

25 which was found in the, uh, in -- in -- in

1 interviewer interrogation, depending on what you
2 choose to call it.

3 Q When you did review the school records, you
4 reviewed those after your, uh, initial opinion;
5 correct?

6 A That's right.

7 Q Did you note anything in the records that
8 indicated that the school had ever tested Brendan
9 for his level of -- or whether there was a lack
10 of suggestibility?

11 A I didn't note that that was done.

12 Q In your psych -- in your experience, is that
13 an -- uh, normal for schools to make
14 determinations of suggestibility or lack of
15 suggestibility?

16 A No.

17 Q So it wasn't unusual not to see that in the
18 records; correct?

19 A Absolutely.

20 Q In the, uh, actual example, the Gudjonsson
21 Suggestibility, uh, test that you performed on
22 Brendan, and I believe that Mr. Kratz pointed out
23 and had you read portions of, um, you indicated
24 that you had changed the word "pound" to
25 "dollar"; correct?

1 A Correct.

2 Q Essentially, changing the English monetary
3 system, den -- denoting money, to what -- the
4 American -- the Americanized monetary dollar;
5 correct?

6 A Correct.

7 Q Was that -- in reviewing the test, itself, did
8 that affect results of yield or shift? Changing
9 that one word?

10 A No, because no questions were based on pound versus
11 dollar.

12 Q On cross-examination, you indicated that shift
13 and yield is not necessarily indicative of
14 whether someone answers true or false; is that
15 correct?

16 A That's correct.

17 Q On -- Mr. Kratz asked you a few follow-up
18 questions, and questioned you on the significance
19 of Brendan's shifting to a true answer based on
20 mild pressures; correct?

21 A That's correct.

22 Q What significance does that have, based -- in
23 regards to your opinion on, uh, susceptibility to
24 suggestion?

25 A None.

1 Q Is the test -- the Gudjonsson Suggestibility
2 Scale test -- designed to determine if the
3 answers are true or false?
4 A No.
5 Q What is the -- the design of the test?
6 A It's designed to assess whether a person is
7 suggestible. Interrogative suggestibility, to use
8 the entire word.
9 Q So, if someone would shift from a true answer to
10 a false answer, would -- well, what indicate --
11 how -- what, uh, impact would that have on your
12 opinion?
13 A It would simply show that they shift their answers in
14 response to pressure or criticism of their prior
15 response, and would show that they are susceptible to
16 change if they repeatedly did that.
17 Q Is that the point of the test?
18 A Yes, sir.
19 Q One point that, uh -- during questioning on
20 cross, Mr. Kratz asked, or commented, that
21 Brendan had shifted or changed his answer when
22 you, quote, his psychologist, asked him; correct?
23 A He shifted his answer when I didn't -- I didn't ask
24 him -- I -- I told him that I wanted him to do better
25 and --

1 Q Doctor, actually, my question is, simply, he
2 shifted -- the question was asked on cross
3 whether -- Mr. Kratz asked you, did he shift or
4 did he change -- excuse me, not shift. Did he
5 change his answer to you, his psychologist?
6 A He changed it to me, psychologist, as respon -- in
7 response to what I said to him. True.
8 Q This is when you were you there meeting with
9 Brendan; correct?
10 A Correct.
11 Q And you observed the March 1, 2006, video?
12 A True.
13 Q At times, do you recall, if you do recall,
14 examples of when the officers referred to him as
15 "buddy?"
16 A Yes.
17 Q Touched his knee?
18 A Yes.
19 Q Essentially, befriending themselves with Brendan?
20 A On some occasions.
21 Q And do you note -- did you note, again, similar
22 changes in answers to these officers who were
23 befriending him?
24 A True.
25 ATTORNEY FREMGEN: Nothing else, Judge.

1 THE COURT: Any recross?

2 RECROSS-EXAMINATION

3 BY ATTORNEY KRATZ:

4 Q Just one -- one question, Dr. Gordon.

5 Mr. Fremgen asked you about yield and shift, and
6 gave you an example of Brendan being questioned
7 by officers, um, and then changing his answer.
8 If that was an example of what, uh, Mr. Fremgen
9 called yield and shift. Do you remember that
10 question?

11 A I do.

12 Q Isn't that also an example of an interrogative
13 process where a suspect denies involvement in a
14 crime, is confronted with evidence against him,
15 and then admits to the crime? It's just as
16 consistent with that, isn't it?

17 A It's consistent with getting a confession.

18 ATTORNEY KRATZ: All right. That's all
19 I've got of Dr. Gordon. Thank you, very much,
20 again.

21 THE COURT: All right. You may step down.

22 ATTORNEY FREMGEN: Judge, I would move
23 Exhibits, with the same conditions as we've
24 placed before, 226, 227, 229 and 230 and 231.

25 THE COURT: Any objection to that?

1 ATTORNEY KRATZ: I may have a objection to
2 later use, but to complete the record, I have no
3 objection, Judge. Thank you.

4 THE COURT: All right. Mr. Fremgen, any
5 additional witnesses?

6 ATTORNEY FREMGEN: No, Judge.

7 THE COURT: Uh, I think we now have some
8 matters to -- to take up. I'm going to excuse the
9 jury for a few moments.

10 (Jury out at 1:54 p.m.)

11 THE COURT: All right. You may be
12 seated. Mr. Kratz, it's my understanding that
13 the prosecution proposes introducing some
14 rebuttal testimony this afternoon; is that
15 correct?

16 ATTORNEY KRATZ: Yes.

17 THE COURT: And I -- we have discussed this
18 briefly in chambers before coming here, all counsel,
19 uh, together with the Court, uh, and I said to you
20 that before rebuttal testimony would be permitted, I
21 would have to hear from you an offer of proof as to
22 who was going to testify and, uh, specifically, on
23 what particular issues was he or she going to
24 testify.

25 The general rule is that rebuttal may

1 meet only new material, or new testimony, new
2 facts, put in by the defendant. Uh, essentially,
3 it's -- the Court has a fair amount of discretion
4 in permitting or rejecting rebuttal testimony.
5 Uh, with that said, Mr. Kratz, are you prepared
6 to make an offer of proof?

7 ATTORNEY KRATZ: I can either do that
8 orally or I can do that by question and answer,
9 Judge. I think if I do it orally, that would,
10 uh -- that would suffice. But, uh, if you want a
11 more detailed version, we can do that. How about
12 I try it orally first, and then --

13 THE COURT: Please.

14 ATTORNEY KRATZ: -- then we'll see. We do
15 intend to call, uh, James Armentrout, clinical, uh,
16 psychologist. Uh, that CV was provided to
17 Mr. Fremgen this morning. It was sent over the
18 evening hours to the D.A's Office here, and I
19 provided it, as the Court, uh, wished.

20 Dr. Armentrout has brought with him, uh,
21 his original CV, and I believe he will be, um,
22 recognized as a -- an expert, given his clinical
23 psychology background, as well as the number of
24 times he's been accepted in, uh, this and other
25 states as an expert.

1 The new testimony, Judge, that's been
2 presented by Dr. Gordon, are on the issues of
3 suggestibility. Uh, and, specifically, uh,
4 whether or not, uh, psychologists, whether
5 forensic or clinical, uh, psychologists, um,
6 render opinions in an expert capacity in that
7 area. Uh, specifically, the issue of whether,
8 uh, suggestibility is a specialty or
9 sub-specialty, uh, is of issue in this case, and
10 I believe Dr. Armentrout can testify about that.

11 More importantly, however,
12 Dr. Armentrout is familiar, because of the
13 discovery provided by Mr. Fremgen, with the
14 tests, reports and opinions, uh, which have been
15 completed by Dr., uh, Gordon. Uh, Dr. Armentrout
16 is prepared to comment as to, uh, those reports,
17 as to each of the specific tests, how they were
18 administered, uh, and, again, perhaps, most
19 importantly, the opinions that, uh, may be drawn,
20 uh, therefrom.

21 Uh, Dr. Armentrout, specifically, and
22 finally, uh, will give, um, uh, an opinion, uh,
23 regarding the, uh, ultimate opinion rendered by,
24 uh, Dr., uh, Gordon, uh, and may, in fact,
25 disagree that the test results, um, at least from

1 his review of those same materials that
2 Dr. Gordon has provided, uh, may lead to that
3 result.

4 I anticipate the rebuttal testimony, uh,
5 to be a half an hour or less. Uh, will, in a
6 very strict sense, be rebuttal. That is only
7 what Dr. Gordon, uh, has testified about, and we
8 are prepared to proceed in that fashion.

9 THE COURT: Before I -- I get to
10 Mr. Fremgen, I'm just reviewing my notes, haphazard
11 as they are, but, uh, it was my recollection that
12 Dr. Gordon claimed that, uh, false confessions and
13 suggestibility was neither a specialty nor a
14 sub-specialty. Did I miss that?

15 ATTORNEY KRATZ: That it -- it remains,
16 uh -- it remains an issue, Judge. Uh, whether, uh,
17 this -- whether Dr. Gordon, um, believes he, or any
18 other psychologist, is, um, qualified or capable to
19 render an opinion as to suggestibility, uh, is very
20 much at issue. Dr. Armentrout has an opinion about
21 that and I intend to ask him about that.

22 Uh, he will describe, specifically, what
23 suggestibility is, and is familiar not only with
24 the practice of, uh, clinical and forensic, uh,
25 psychology, um, but also, uh, trial or courtroom,

1 uh, testimony. Uh, and that the, uh, opinions,
2 um, reached by Dr., uh, Gordon, uh, he, I
3 believe, will opine, uh, is, uh, nothing more,
4 uh, than a combination or culmination of
5 descriptive terms, and do not, in fact, uh, rise
6 to the level of, uh, an expert opinion that can,
7 in fact, be reached by a psychologist, whether
8 forensic or clinical.

9 THE COURT: That's a good answer, but it
10 wasn't to the question that I asked of you. Namely,
11 that, uh, it was my understanding, based on
12 Dr. Gordon's testimony, that he did -- was
13 unclaiming either sub-specialty or specialty status
14 for, uh, the suggestibility. I -- and I'm asking,
15 did I -- did I misunderstand?

16 ATTORNEY KRATZ: No. It's -- it's -- it's
17 as to whether or not an expert opinion that is
18 within the field of forensic or clinical psychology,
19 uh, whether this is a recognized, uh, area of expert
20 opinion. He will say, no. And this jury, uh, who
21 has, uh, been led to believe that, uh, it is, uh, by
22 Dr., uh, Gordon, and I understand that might be a
23 question of fact, but I guess that's the point,
24 Judge, it's as to whether or not, uh, this jury
25 should be, uh, left with the unchallenged, uh,

1 position that, uh, in fact, this is somehow
2 sanctioned by the psychological community. The fact
3 of the matter is, it is not, and I should be able
4 to, uh, go into that line of questioning.

5 THE COURT: Mr. Fremgen.

6 ATTORNEY FREMGEN: Well, I -- I think that
7 line of question should have been addressed to
8 Dr. Gordon, first, before he brings in rebuttal.
9 And I al -- also agree with the Court. My
10 recollection is, specifically, the doctor said that
11 the suggestibility is not a sub-specialty. In fact,
12 I think he said forensic and clinical are
13 sub-specialties of general psychology.

14 I don't understand how that's even an
15 issue. Um, it seems, also, to be somewhat more
16 directed towards the ad -- admissibility issue
17 that we've already addressed previously.

18 Um, I -- at this point, I guess I don't
19 have any problems if Dr. Armentrout testifies
20 about tests, his opinions about these tests. Uh,
21 but as to rebutting his -- the conclusions, and,
22 suppose, we'd have to hear more, I recall when I
23 offered my proof -- the offer of proof to the
24 Court, we offered, also, as much detail, as you
25 possibly could, into Dr. Gordon's, um,

1 understanding of the issue of suggestibility and
2 the research in that field.

3 Dr. Armentrout's, um, Curriculum Vitae
4 essentially indicates he has a Ph.D in child
5 psychology. Many of his, uh -- in fact, almost
6 all but possibly three or four of his papers or
7 publications deal with, primarily, families,
8 parents and children. And his current, uh,
9 position with the Department of Community -- or
10 Human Services in Calumet County, and vocational
11 rehabilitation, SSI -- or excuse me -- social
12 security determination, um, none of it shows any
13 significant or any -- or, actually, none of it
14 shows any, uh, involvement in any sort of
15 forensic type of, uh, uh, expertise.

16 So, I -- I -- I question whether he even
17 has the ability to -- to answer, directly, other
18 than to simply say whatever the State asks him to
19 say.

20 THE COURT: Response?

21 ATTORNEY KRATZ: Uh, Dr. Gordon's
22 published, uh, papers are on Rorschach tests and
23 abortion. That because -- and I think it points
24 out, Judge, because this is the first time, at least
25 that we've seen, that this area, uh, is being

1 ventured into, I wouldn't expect there to be a lot
2 of publications or a lot of testimony on this issue.

3 I think it's recognized, at least in
4 this area, certainly before this Court, and the
5 first time that, uh, myself or Mr. Fremgen have
6 addressed this, that this area has been allowed
7 in trial testimony.

8 Uh, as far as **Walstad** goes, this doctor,
9 uh, I believe to be, uh, able to render relevant,
10 rebuttal testimony as to the last.

11 THE COURT: Mr. Fremgen, anything else?

12 ATTORNEY FREMGEN: No, Judge.

13 THE COURT: Uh, the Court is going to
14 permit Dr. Armentrout to testify as a rebuttal
15 witness. I'm going to limit the testimony to the
16 tests, the interpretation of those tests, and,
17 assuming that a foundation is -- sufficient
18 foundation is laid, and, again, I haven't seen his
19 CV, nor have I seen a written proffer of what it is
20 he's going to say, but assuming a sufficient
21 foundation has been laid, he can give testimony as
22 to the opinions of Dr. Gordon.

23 Uh, I'm not interested in hearing
24 whether he believes, uh, suggestibility or the
25 GSS is a specialty or sub-specialty of -- of, uh,

1 psychology or forensic psychology. Now, with
2 that said, uh --

3 ATTORNEY KRATZ: The GSS is a test. I
4 assume he can talk about that?

5 THE COURT: Assuming he -- assuming he can
6 lay a foundation, yeah. The Gudjonsson
7 Suggestibility Scales.

8 ATTORNEY KRATZ: Yeah.

9 THE COURT: As long as there's a
10 foundation, he can talk about it, yeah. Because
11 that's -- that is one of the tests, apparently,
12 that you wish him to comment on.

13 ATTORNEY KRATZ: I do.

14 THE COURT: All right. Are you prepared
15 to -- what --

16 ATTORNEY KRATZ: If I could have 30
17 seconds to -- to -- to frame -- or at least to
18 talk to Dr. Armentrout about that --

19 THE COURT: That's fair. But, before you
20 do, uh, prior -- one item -- minor item of
21 unfinished business, uh, Mr. Fremgen, over the lunch
22 hour, was going to review his file to determine
23 whether or not there were any -- any other pieces of
24 information that you were entitled to under the
25 discovery order, under nine seventy-one

1 twenty-three, and if there weren't, uh, we would let
2 the matter pass. Has he done that?

3 ATTORNEY KRATZ: He has. Uh, Mr. Fremgen
4 has explained why I didn't get the, uh, information
5 that Dr. Gordon, um --

6 ATTORNEY FREMGEN: It was my fault, Judge,
7 not Dr. Gordon.

8 ATTORNEY KRATZ: Correct. Correct. If I
9 can finish.

10 ATTORNEY FREMGEN: Actually, it was
11 Ray's fault.

12 THE COURT: Let -- let's -- let Mr. Kratz
13 finish, please.

14 ATTORNEY KRATZ: He explained why it was
15 that the discovery order was not complied with. I
16 find that to be, uh, a reasonable explanation and I
17 have no further, um, uh, comment to make to the
18 Court. I'm satisfied with Mr. Fremgen's
19 representation.

20 THE COURT: All right. The matter --

21 ATTORNEY KRATZ: And I don't blame Ray,
22 like Mr. Fremgen.

23 THE COURT: Matter is dropped, then. How
24 much time do you need, Mr. Kratz?

25 ATTORNEY KRATZ: Just a minute, Judge.

1 THE COURT: Okay.

2 (Recess had)

3 THE COURT: You may proceed, Mr. Kratz.

4 ATTORNEY KRATZ: Don't we need the jury?

5 THE COURT: Oh, that's true. We could use
6 them.

7 (Reconvened at 2:10 p.m. Jury in)

8 THE COURT: Be seated. Before we proceed,
9 uh, Mr. Fremgen, I take it you've rested at this
10 point?

11 ATTORNEY FREMGEN: Yes.

12 THE COURT: On the record?

13 ATTORNEY FREMGEN: Yes.

14 THE COURT: Okay. You may now proceed.

15 ATTORNEY KRATZ: Thank you, Judge. The
16 State will call James Armentrout to the stand.

17 THE CLERK: Please raise your right hand.

18 **JAMES ARMENTROUT,**

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: James Armentrout,
24 A-r-m-e-n-t-r-o-u-t.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY KRATZ:

2 Q Tell us, please, how you're employed?

3 A I am a licensed psychologist.

4 Q And, Dr. Armentrout, uh, start, if you will,
5 explaining for the jury what educational
6 background you have?

7 A Well, I received an Undergraduate Degree in
8 Mathematics and a Master's Degree in Psychology from
9 the University of Kansas in the 1960's. And, um, a
10 Doctorate in Clinical Psychology from the University
11 of Minnesota in 1968.

12 Q Do you enjoy any areas of specialization? In
13 other words, at the current time, how is it that
14 you are involved in the practice of psychology?

15 A Um, would you like me to review employment and --

16 Q Sure, why don't you do that?

17 A Now, from 1968 until 1972, I held faculty rank as
18 assistant professor in the Department of Neurology
19 and Psychiatry at St. Louis University. In that
20 position, I had a joint appointment as assistant
21 professor in Psychology.

22 In 1972, um, I moved to McMaster
23 University in Ontario in a position of associate
24 professor in the Department of Psychiatry of the
25 medical school there.

1 In that position, I was chief
2 psychologist of one of the four clinical teaching
3 settings of the medical school, and, um, had a
4 variety of activities.

5 In 1976, I came to Wisconsin in the
6 position of chief psychologist at Winnebago
7 Mental Health Institute. I continued in that
8 position for seven years, and then left the
9 administrative position but continued to work as
10 a staff psychologist at Winnebago until 1998, a
11 total of 22 years.

12 Um, I have always been either certified
13 registered or licensed for the independent
14 practice of psychology since, I believe, 1969,
15 and I've been licensed in Wisconsin since early
16 in 1977, shortly after I came to this state.

17 Q You're currently involved in the private practice
18 of psychology?

19 A Yes, I -- I have done that on a part-time basis all
20 the way through, but since leaving state employment
21 in 1998, I have been doing that primarily.

22 Q You mentioned briefly, but could you talk more,
23 specifically, about what any professional
24 affiliations you may enjoy?

25 A Well, I have belonged to the American Psychological

1 Association since the 1960's. Uh, have been a member
2 of the, um, National Register of Health Service
3 Providers in Psychology since that organization was
4 founded, which would have been sometime in the, I
5 believe, early, um -- early 1970's. But those are
6 the only organizations I belong to.

7 Q Have you ever been an author or co-author of any
8 papers or publications?

9 A Well, I did that during the, um, eight years in which
10 I held university faculty appointment. It was an
11 expectation in that line of work that one would, um,
12 produce scholarly, um, papers, and I -- I produced
13 20-some, all in referee journals, um, during that
14 period of time.

15 But once I came to Wisconsin, um, I did
16 very little of that work because it was not
17 something that was encouraged in state employment
18 at Winnebago Mental Health Institute. Simply is
19 not the mission of the state facilities as it had
20 been universities.

21 Q Prior to today, have you ever been asked to
22 testify in a court proceeding? Specifically, in
23 a jury trial? And have you, in the state of
24 Wisconsin, been accepted, and recognized, as an
25 expert witness in the field of psychology?

1 A Yes, very many times. Pardon me. I believe I began
2 testifying in court hearings, um, back in the early
3 1970's, and have, um, been involved in quite a
4 variety of different, um -- different proceedings,
5 different types of proceedings. I have never failed
6 to be recognized as qualified to provide an expert
7 opinion in the field of psychology.

8 Q Dr. Armentrout, let me ask you about this case,
9 specifically. Uh, did you receive, uh, some time
10 within the last several weeks, a call from, uh,
11 me, uh, asking to provide consultation services,
12 uh, regarding some information that we had been
13 provided?

14 A Yes, I did.

15 Q And could you tell the jury, please, how you, uh,
16 responded, and how you've become involved in this
17 case?

18 A Um, I received the call from you asking if I would be
19 willing to review the information, um, in this case.
20 Um, and I agreed that I would do so. That was
21 approximately two weeks ago. There was a very short
22 time period.

23 And after I agreed to do that, um, I did
24 call your office and indicated to one of the
25 staff that I hoped I had not agreed to testify,

1 because I did not know if I would have an
2 opinion, um, that would be needed at the -- at
3 the hearing, and, um, I said -- but I said I
4 would be happy to talk.

5 You and I spoke on a Tuesday afternoon,
6 I believe, about a week -- perhaps two weeks ago
7 now, and at that time, um, as you pointed out,
8 our relationship was simply one of consultation,
9 to talk over the information that had been
10 submitted for this hearing, and that it was an
11 open question whether we would proceed beyond
12 that.

13 Um, I did receive some information from
14 you at that time, and I received, um, copies of
15 what I believe were Dr. Gordon's files, when
16 those became available. That was approximately a
17 week or so ago.

18 Um, we then spoke again on this past
19 Sunday morning to review my opinion of that
20 information, and I think, as a result of that,
21 I'm here today.

22 Q Dr. Armentrout were you able, then, after
23 receiving, uh, Dr. Gordon's file, that is, the
24 test results, uh, collateral, or at least a very
25 small portion of the collateral information, and

1 most, specifically, Dr. Gordon's, uh, written
2 report, um, able to review that information and
3 able to form some, uh, opinions about?

4 A Uh, yes, I did.

5 Q Let me first, uh, ask about some of the testing
6 that Dr. Gordon, uh, performed, and I'm going to
7 be, specifically, asking you about the
8 administration, and, uh, perhaps, at the
9 conclusion of, uh, these series of questions,
10 asking, uh, you to comment on whatever opinions
11 might be drawn therefrom.

12 Let's first start with, uh, something
13 that is called Wechsler, uh, Abbreviated
14 Intelligence Scale. First of all, in the course
15 of your, uh, experience as a licensed
16 psychologist in the state of Wisconsin, are you
17 familiar with this test?

18 A Well, I am familiar in that I have seen it used on
19 occasions. Um, as you mentioned, it is a short form
20 of the Standard Wechsler Adult Intelligence Scale,
21 uh, which is most popularly now in its third edition,
22 although a fourth edition has been published, but it
23 is not widely used quite yet.

24 But the third edition of that test is
25 out. That consists of 11 sub-tests. Um, the

1 abbreviated scale of intelligence that you
2 mentioned, um, is composed of four sub-tests.
3 Two primarily verbal, two primarily nonverbal in
4 character. And, um, the results of that test are
5 used in an attempt to predict what one might have
6 been, or what score one might have obtained, had
7 the whole scale been, um, administered.

8 So that we do have the possibility of
9 predicting verbal, nonverbal and full scale IQ
10 scores based on only four, rather than the full
11 11, sub-tests.

12 Q But even of the four sub-tests in the abbreviated
13 version that was available, uh, are you familiar
14 in the review of, uh, Dr. Gordon's file how many
15 sub-tests were actually administered in this
16 case?

17 A Yes. I think I pointed out to you that two of the
18 four sub-tests were administered. One verbal and one
19 nonverbal. At the same time, I was aware from other
20 information that the question of Mr. Dassey's general
21 intelligence level is of importance in this matter,
22 because some other claims made about him, um, are
23 said to vary with levels of intelligence.

24 It seemed to me important to get as good
25 a measure of intelligence as one can under the

1 circumstances. Now, there may have been
2 circumstances under which no more than 10 or 15
3 minutes was available for the administration of
4 that test. And, therefore, only half of it was
5 done.

6 But, um, again, it's -- makes what was
7 already an abbreviated estimate an even more
8 sketchy estimate. If we attempt to, um, estimate
9 the average height of ten people, we'll do better
10 if we measure eight of them than if we measure
11 one or two. The more information, the better
12 estimate.

13 And I think because, uh, the results
14 reported on that test, as well as the other one
15 done by Dr. Gordon, do differ somewhat from what
16 I understood were results reported by
17 Mr. Dassey's school, in which he had been scoring
18 five to ten points lower on intelligence tests in
19 school, uh, I felt that, um, perhaps a better
20 measure of intelligence or more comprehensive
21 measure would have been helpful.

22 Q Dr. Gordon's result of 81, uh, as a full scale,
23 uh, intelligence score, are you familiar with
24 where that, uh, ranks, if you will, or at least
25 from the Wechsler scale, uh, how that's

1 categorized?

2 A Within the manuals for the Wechsler Intelligence
3 Scales, that score would be near the end of what's
4 labeled the low average range of intelligence. But
5 it is true that within the -- what we call DSM-4, the
6 Diagnostic and Statistical Manual, Edition 4, of the
7 American Psychiatric Association, there is a
8 diagnosis of borderline intellectual functioning,
9 which can be used when IQ scores vary from
10 approximately 71 to 84.

11 So, um, again, that score is right on
12 the borderline of sorts, between the -- the
13 borderline intelligence level and the low average
14 level.

15 Q Just so that the jury doesn't have any, uh,
16 confusion, you don't, um, quarrel or quibble
17 with, uh, Dr. Gordon's, um, assignment or
18 assessment of that particular score as being, uh,
19 towards the low average range?

20 A Well, I believe the score speaks for itself and
21 needs, um, you know, little interpretation. Um --

22 Q All right.

23 A Again, I don't quibble, no.

24 Q By the way, before we -- we go any further, uh,
25 sitting up by your witness stand is Exhibit No.

1 232. Tell the jury what that is, please?

2 A Um, well, this is the copy of the Curriculum Vitae I
3 provided to you.

4 Q And what is a Curriculum Vitae, please?

5 A Um, it is the academic equivalent of a resumé. It
6 should summarize a person's background, their
7 educational training, their, um, occupational, um,
8 jobs, sorts of things they've done. There is no
9 standard format.

10 Some people will include detailed
11 information about specific activities they have
12 done. Other people are, um, less talkative about
13 that, I guess. But it should show where a person
14 has been working, the types of work they have
15 done, and any notable accomplishments, whether
16 those be professional publications, awards or
17 things of that sort.

18 Q And this is, in fact, a true and accurate, at
19 least as far as, uh, the information for your
20 qualifications to provide an expert opinion; is
21 that -- is that correct?

22 A Well, it is accurate with one exception. I -- I
23 noted that it does not, um, include reference to the
24 fact that, within the past several years, I have
25 twice served as a, um, temporary, part-time employee

1 at the Kettle Moraine Correctional Institution.

2 Um, I served there to help them while
3 they were attempting to recruit staff. There is
4 something of a manpower shortage within the
5 correctional system. So I spent two to three
6 days per week, um, over the last two-and-a-half
7 years, up until last October. And I believe
8 that, um, does not appear on the -- on the
9 document.

10 Q The next, uh, test or, uh, instrument that
11 Dr. Gordon commented about was something called
12 the 16-PF. Let me first ask you if you are
13 familiar with that instrument?

14 A I have some familiarity with it. It is not a test
15 that I have, um, used routinely, nor, in fact, at all
16 within probably quite a number of years. Um, the
17 intent of the test is to assess personality
18 dimensions of, um, nonclinical, or so-called normal
19 personality.

20 We do have tests which assess elements
21 of mental illness, maladjustment, interpersonal
22 difficulties, mood states, and things of that
23 sort. But these are more clinical tests used for
24 people who are in crises or, um, having
25 significant problems.

1 The 16-PF was intended to mention -- or
2 pardon me -- to measure dimensions relevant to
3 more normal personality.

4 Q Now, were you also asked -- and were you provided
5 with the, um, summary of the test results for
6 each of these instruments?

7 A I did say -- see a computer-generated, um, printout
8 of those results. Um, yes, I did.

9 Q And on page three of the summary of the 16-PF
10 report, uh, Dr. Armentrout, did you make specific
11 note, uh, of Mr. Dassey's ability to manipulate
12 verbal concepts? In other words, uh, that
13 particular finding in that report?

14 A Yes, I did. But, um, that statement, to me,
15 underlines a major shortcoming of virtually all of
16 the mail-order computerized test scoring services.
17 They simply are not specific enough for the
18 individual and the circumstances in which the test
19 was used.

20 As I pointed out to you, if we go
21 through that report, we can find a great deal of
22 inconsistent and, at times, diametrically opposed
23 information saying that a person tends to do
24 this, but he tends to do something else. He is
25 similar to some people who have this, and less

1 similar in other ways. I felt those statements
2 were so general that they offered little
3 assistance in understanding what an individual
4 did on one particular day.

5 As an example, there is a statement,
6 despite having said the young gentleman involved
7 is a shy, withdrawn person who avoids crowds and
8 is uncomfortable around people, we could pull out
9 statements that say, and I quote here from page
10 three, "He appears to be about average on warmth,
11 discretion and group orientation. He shows about
12 as much concern for others as the average
13 person." And a little bit later, "He is about as
14 much a team player as his peers."

15 I find this, um, pattern of offering one
16 side, and then offering a diametrically opposed
17 side, leaves one unable to make any conclusion.

18 Um, I have, for myself, a small test I
19 use that I do recommend people apply, and that
20 is, when you read descriptive statements about
21 people, I ask myself, so what? He is shy. He is
22 withdrawn. Well, so what? What does that tell
23 us?

24 I look for a statement that says,
25 therefore, he did this. He did not do that. He

1 might do -- But to simply describe a person and
2 say, he tends to be this, or he tends to be that,
3 is not very helpful in my opinion.

4 Q Doctor, I've handed you what's been received as
5 Exhibit No. 231. Have you seen that document
6 before?

7 A Yes, I have. This appears to be the report of
8 Dr. Gordon's evaluation. It's addressed to
9 Mr. Fremgen.

10 Q Specifically, um, I -- I should say, first, have
11 you reviewed, and have you had an ability to, um,
12 digest, for lack of a better term, the
13 conclusions and opinions that Dr. Gordon draws
14 within that report?

15 A Yes, I have.

16 Q Do you find anywhere, within Dr. Gordon's report,
17 mention of these, um, conflicting, uh, results or
18 these conflicting summary statements that, uh, at
19 least as we're discussing at this moment, are
20 found in the 16-PF report?

21 A The difficulty I have is that most of the information
22 offered is phrased as probabilistic vague descriptive
23 terms. This person tends to do this. Is prone to do
24 that. Sometimes does something else. And when I
25 ask, well, so what? What can I then conclude or

1 predict on the basis of those? I find very little.

2 Um, I did not find in that report that
3 any specific allegations or formulations or
4 connections were drawn between these descriptive
5 terms applied to Mr. Dassey, and the behavior
6 patterns, the specific things which have been
7 alleged in this, um, case.

8 Q All right. We'll get, uh, more specific as to,
9 uh -- as to those opinions. But let me move to
10 the next instrument. That being the State Trait,
11 uh -- just get that a second -- Anger Expression
12 Inventory. First of all, are you familiar with
13 this instrument?

14 A It is not something that I have ever used. Um, I am
15 aware of it. It was devised by a psychologist named
16 Charles Spielberger, who I believe is at the
17 University of Florida, and is a name recognized by
18 most psychologists, although certainly not in a
19 clinical or forensic context. Um, but I am aware of
20 that.

21 Um, I am more familiar with a similar
22 document called the Straight -- pardon me. The
23 State Trait Anxiety Inventory, in which the,
24 um -- the items are directed more specifically
25 toward the experience of anxiety, either as a

1 continuing trait or as a short-term state. But,
2 uh, I'm not surprised there is an anger
3 inventory. I had not seen it before this matter.

4 Q Exhibit 231, uh, Dr. Gordon's, uh, summary
5 report, are you familiar that within that report
6 Dr. Gordon attributes the, um, behavior or the,
7 um, characteristic of anxiety as something that
8 can be judged or, uh, gleaned out of the Anger
9 Expression Inventory instrument?

10 A I did see that. Um, apparently, at some point, you
11 know, Dr. Gordon did reach the conclusion that, um,
12 the young man has significant problems with anxiety.
13 I did not see that reflected in any of the tests
14 you've mentioned so far, nor any of the others.

15 Specifically, I don't believe an Anger
16 Expression Inventory is intended to assess
17 anxiety, particularly since we have many more
18 effective, more widely accepted tests, which also
19 would assess anxiety, such as the MMPI.

20 Q And let's go to that, uh, next. You understand
21 that Dr. Gordon administered something called the
22 MMPI-A? That being the adolescent version, uh,
23 of that instrument. First of all, are you aware
24 of that test instrument?

25 A Yes, I'm quite aware of the MMPI-A. During my

1 training many years ago, I was literally steeped in
2 the MMPI. Um, brainwashed, um, as a young
3 psychologist. But, um, I'm quite aware of it. I
4 have been to specific training with, uh, Robert
5 Archer, the gentleman that devised that offshoot of
6 the traditional MMPI. So I am quite familiar with
7 it.

8 Q Dr. Gordon talked about various, um, scales or
9 conclusions being developed as the, uh,
10 instrument as examined -- 478 answers are
11 examined -- Can you tell the jury, generally, how
12 that process works?

13 A How was -- the instrument was originally developed?

14 Q How the instrument is scored or how these scales
15 have been developed, uh, based upon those answers
16 or test answer results?

17 A Well, the MMPI, itself, was developed back in the
18 1940's at the University of Minnesota Hospital,
19 specifically, by, um, a psychiatrist and psychologist
20 who wanted to develop a paper and pencil
21 self-administered inventory, which might give a
22 mental health worker some direction as to the nature
23 of mental or emotional problems a person was, um,
24 experiencing.

25 So, through a method, that I won't take

1 the time to describe, but they were able to
2 identify short statements which seemed to
3 separate groups of people who did have serious
4 depression problems from those who did not.
5 People who had serious health concerns or serious
6 problems with impulsivity, suspiciousness,
7 mistrust, anxiety, worry, just a variety of
8 things.

9 And out of that came the MMPI. At that
10 time 566, now 567, items, each of which is
11 answered true or false and can be scored either
12 by hand or by machine to produce what we call a
13 test profile, which simply links together on a
14 graph the extreme -- the extreme nature of the
15 scores on those different sets of items.

16 Now, the original MMPI was intended to
17 be used in a clinical setting where a person goes
18 to talk to a doctor or therapist in a
19 confidential manner. There were questions
20 included in that, um, test which would not be
21 appropriate for friendly conversation. Questions
22 about religious beliefs, or whether one's stools
23 are black and tarry, or whether, um, one has done
24 things too bad to talk about. There are a number
25 of items there that were felt inappropriate

1 outside of a psychiatric or psychological
2 setting.

3 Um, there were tests devised, such as
4 the California Psychological Inventory to drop
5 out those objectionable items. When the MMPI was
6 revised, um, to the second edition by, uh,
7 Dr. Butcher, who, someone, again, I'm well
8 familiar with, because he was on my dissertation
9 committee and preliminary exam committee, but I,
10 again, um, know quite a bit about the way that
11 was done.

12 However, the MMPI, itself, included
13 virtually no items pertaining to areas of
14 adjustment very relevant for teenagers. The
15 extent of conflicts within one's family, um,
16 general well-being, um, items pertaining to
17 specific difficulties within the school setting.
18 And so the MMPI-A, A being for adolescent, was
19 devised to try to add some assessment of those
20 other areas of adolescent experience to some of
21 the clinical areas of the MMPI which had been
22 used forever.

23 Um, during my training in the 1960's,
24 um, the MMPI was completed by anyone entering the
25 University of Minnesota hospitals, age 12 or

1 over, even though we knew many of those items
2 were not appropriate. I mean, an item such as,
3 my sex life is satisfactory, is not something I
4 would typically ask a 12-year-old. But when they
5 completed that test, they could either answer
6 true or false or leave it blank because we didn't
7 look at it.

8 But the MMPI-A was really an attempt to
9 modify the methodology of the MMPI to a form that
10 would be, um, with more broadly applicable for
11 adolescents.

12 Q And are you aware that this was administered to
13 Brendan Dassey and was, thereafter, scored? That
14 is, that a profile was developed?

15 A Yes, I am.

16 Q How many, if I can use the word "primary," scales
17 are there in an MMPI adolescent version?

18 A Well, it depends if one is talking about the validity
19 scales, the typical clinical scales, the content
20 scales. And, then, of course, the scales,
21 themselves, have been broken down, through factor
22 analysis, into sub-scales, and there is also usually
23 a split between what are called subtle scales as
24 opposed to obvious scales. So it goes on and on.

25 In the original MMPI, which had 566

1 items, there were more developed scales to be
2 scored from that test than there were items in
3 the test. In other words, that test had been
4 used for virtually any purpose involving people
5 that you could think of. Somebody, somewhere,
6 had devised a scale to try to measure it.

7 So, typically, a person only uses a part
8 of it. The clinical scales are the most
9 frequently used.

10 Q All right. The last test, uh, Dr. Armentrout,
11 that I'd like to speak with you about, is
12 something called the Gudjonsson Suggestibility
13 Scale.

14 First of all, have you received
15 Dr. Gordon's materials regarding this particular
16 scale, uh, and have you, uh, at least in review
17 of its administration in this case, drawn any
18 conclusions or opinions about its use?

19 A The information that I received in the packet, um,
20 that I picked up from your office, included four
21 pages labeled the GSS-1. I noted the first page had
22 some writing on it. Name, birth date, age, things of
23 that sort. The following three pages were,
24 essentially, unmarked by any handwriting at all.
25 Nothing recorded. Um, nothing at all. The only

1 writing was on the cover page.

2 I was surprised, having seen the report
3 in this matter, that, um, quite a bit is made of
4 Mr. Dassey's performance on that. And, yet, we
5 had no information about it. The other tests had
6 been filled out. We do have handwritten
7 responses recorded right on the test instruments.
8 But we have nothing on the GSS-1. And, so, I
9 raised the question of, it's impossible to really
10 know what happened when that test was
11 administered. Um, that was all I knew.

12 Q Let me ask about the test itself, though. Since
13 that time, have you done some further examination
14 and have you, um, formed an opinion as to the
15 validity or applicability of this particular
16 test, uh, especially as it pertains to rendering
17 an opinion as to suggestibility?

18 A Well, it -- it is my opinion that the --

19 ATTORNEY FREMGEN: Judge, I object to the
20 opinion at this time. I don't think the appropriate
21 foundation has been laid. The one question that was
22 asked prior to this question by the prosecutor was,
23 are you familiar with this test, and the answer
24 wasn't given. Just the discussed reading and
25 looking at the front page and reading all the, uh,

1 copies. There hasn't been any foundation that he's
2 familiar with this test or any background on this
3 test. Before he can offer an opinion on the test, I
4 think there should be something along those lines.

5 THE COURT: Objection is sustained.

6 Q (By Attorney Kratz) Can you give any further
7 background as to what you've learned about this
8 test since you first received copies from our
9 office?

10 A Certainly. Um, I had not heard of this instrument
11 prior to my first conversation with you. I had never
12 heard of it. So, after learning of it, I did look on
13 the internet, um, I did read some information there.
14 I did read, for example, that Dr. Gudjonsson was born
15 in Iceland, received some of his training there, went
16 from there to the Institute of Psychiatry in London.

17 Apparently, he has been a practitioner
18 in England. I don't know if he has ever done any
19 direct clinic work in the United States. But I
20 did attempt to find information and found some on
21 the internet, specifically, about Dr. Gudjonsson
22 and the suggestibility scale.

23 Now, my familiarity with this instrument
24 is based upon the four pages that I received.
25 And I am familiar with what was placed before me

1 and that is what I describe. But as for the
2 instrument, itself, I had never heard of it, so,
3 prior to two -- two weeks ago, I would say.

4 Q The instrument, itself, and the pages that you
5 did receive, are you able, as a licensed
6 psychologist, to comment on the, um -- the
7 administration of the test? That is, the, uh,
8 cultural bias, if any, that is suggested on the
9 face, itself, of this instrument?

10 A Yes, I believe I can.

11 Q And can you offer that opinion for us, please?

12 A In looking at the test, first, I -- I had some
13 concerns about what seems to be the way the test was
14 administered. In Dr. Gordon's report, um, as he
15 described this test, um, and that is on page five, he
16 mentioned that, um, after 45 minutes of time has
17 elapsed, they are then requested to answer a series
18 of leading questions.

19 When I looked at the first page of this
20 document, when it says immediate recall start
21 time, it's a minute and 15 seconds after. But
22 the questioning start time is 35 minutes after.
23 My question was, did he begin his questioning 35
24 rather than 45 minutes after? If so, on what
25 basis? Why is he modifying the test? I had

1 questions at that point. When I --

2 Q Let me do this form by question and answer,

3 Doctor, if I can, because I think that will,

4 um -- will help with the, uh, uh, the

5 presentation. Are you familiar with the term

6 "cross-validation?"

7 A Yes, I am.

8 Q Can you describe what that is for the jury,

9 please?

10 A It, typically, means taking the results of one

11 experiment or one application and applying it to a

12 new sample or a new situation to find out whether the

13 relationships or results obtained the first time will

14 also be obtained the second time. Um, it is not at

15 all unusual for a test to initially have very

16 hopeful, positive results, but on cross-validation,

17 meaning, application in another setting with a

18 different group of people or even with a similar

19 group of people, um, it is not, um, found to be as

20 accurate or helpful as it was initially.

21 It's necessary to repeatedly demonstrate

22 a relationship that you claim has validity.

23 Reliability, meaning the -- the ability to find

24 the same thing each time, is a prerequisite for

25 validity, meaning that you're measuring what you

1 think you're measuring, because I have serious
2 questions whether this scale measures
3 suggestibility at all.

4 Q All right. We'll get into the -- the reasons for
5 those questions. But, um, are you familiar with
6 whether this test is meant to be what is called a
7 standardized test?

8 A As I said, I had no knowledge of it before two weeks
9 ago. Um, I have no -- no knowledge of that. I did
10 look at some of the current textbooks in forensic
11 psychology, such as one by Thomas Grisso, another
12 well-known psychologist, and I did find that he
13 mentioned in passing in one small paragraph that this
14 test exists, but he said nothing more about it. So --

15 Q All right. Um, I interrupted you when you were
16 talking about some of the cultural concerns, or
17 at least, uh, uh, cultural flavor to this
18 particular, uh, instrument. Uh, could you
19 expound on that, please? And I apologize for
20 interrupting.

21 A When I looked at this paragraph, um, I noticed its
22 similarity to a paragraph used in another widely used
23 psychological test, called the Wechsler Memory Scale.
24 That, for example, is the test that the Social
25 Security Administration uses to evaluate, um,

1 people's claims of serious memory defects, which
2 interfere with employment. That is the test that is
3 used.

4 It has one section called logical
5 memory, in which a person is asked to remember a
6 paragraph. The paragraph begins, "Anna Thompson,
7 of South Boston, employed as a cleaning woman,
8 reported at the police station she had been held
9 up on State Street."

10 This paragraph seems an offshoot of
11 that. Um, and yet, I could not understand what
12 the meaning of this paragraph would be for an
13 adolescent who grew up in a relatively small town
14 in -- in Wisconsin. To say that somebody was on
15 holiday in Spain, um, and was advised to contact
16 the British Embassy, seems to have little
17 meaning.

18 Now, once that paragraph is read and a
19 period of time elapses, apparently the individual
20 is asked a series of questions. And it's
21 important to know whether the person remembers
22 the story or not.

23 But we do not know whether Mr. Dassey
24 remembered anything of that story 30 seconds
25 after it was read to him because there's no

1 recorded memory score on the sheet that I
2 received. He might not have even known what the
3 story was about. And to say that hearing a
4 paragraph read for a minute and 15 seconds about
5 a crime involving a woman from England on holiday
6 in Spain with her husband, that seems so far
7 afield from an individual who is alleged to have
8 participated in a truly heinous crime, I don't
9 see the connection there at all, and I don't see
10 why anyone would attempt to try very hard to
11 remember all of that story.

12 But as I mentioned to Mr. Kratz, if we
13 assume the individual recalls nothing of that
14 story, 35 minutes later he's given a choice, this
15 or that. Now, I could ask someone, guess three
16 or five. If they guess, three, and I tell them,
17 that's not very good, you can do better, try
18 again, they're going to guess five. I mean, most
19 people would not repeat answers they have just
20 been told are wrong.

21 And, so, we don't know why a person
22 would change answers when asked a set of
23 questions twice. Maybe they're trying to do well
24 and get the right answer, and maybe they have not
25 the foggiest notion about what that story was

1 that was read for a minute and 15 seconds more
2 than a half hour ago.

3 So, I think to take a person's response
4 to those questions, um, and attach a meaning to
5 it in terms of suggestibility, seem far afield to
6 me. It seemed unjustified.

7 THE COURT: Mr. Kratz, we seem to be going
8 into sort of a narrative mode here.

9 ATTORNEY KRATZ: I'm going --

10 THE COURT: Can we -- can we become a
11 question and answer mode instead?

12 ATTORNEY KRATZ: Certainly can, Judge.

13 THE COURT: All right.

14 ATTORNEY KRATZ: In fact, I'm going to
15 wrap up this question with, uh -- or excuse me,
16 this examination with this doctor.

17 Q (By Attorney Kratz) Um, reviewing Dr. Gordon's
18 written report, considering the testing that he
19 did, the intelligence test, the personality test,
20 the inventories and the Gudjonsson Suggestibility
21 Scale, together with the consideration of the
22 other collateral information listed in that
23 report, are you familiar with Dr. Gordon's stated
24 opinion that this man, Brendan Dassey, was
25 significantly vulnerable to suggestibility?

1 A Yes. I noted at the end of his report he mentioned
2 he is very susceptible to suggestibility.

3 Q Based upon your review of the same materials, uh,
4 would you draw the same expert opinion?

5 A I would not draw that opinion. But even given that
6 statement, I would revert to the question of, so
7 what? What does it tell us? And my answer is, not
8 very much.

9 ATTORNEY KRATZ: That's all I have of
10 Dr. Armentrout, Judge. Thank you, very much.

11 THE COURT: Cross?

12 **CROSS-EXAMINATION**

13 BY ATTORNEY FREMGEN:

14 Q Doctor, you indicated, uh, I believe it might
15 be -- is it Exhibit two thirty -- is it 231 or
16 232 before you? The -- your Curriculum Vitae?

17 A Yes. Um-hmm.

18 Q Which number is it?

19 A Two thirty-two.

20 Q Two thirty-two? Now, you're not affiliated
21 with -- you have no forensic affiliations;
22 correct? Listed on that document?

23 A You mean memberships in organizations? No, I do not.

24 Q Correct. Nothing like the American Board of
25 Forensic Psychology?

1 A No. I've been to many of their, um, continuing
2 education things, but I see no reason to seek their
3 certification.

4 Q No scholarly work since 1978; is that correct?

5 A That's right. My positions have not been such where
6 that was part of the job duties.

7 Q Despite your position since 1978, you haven't
8 provided any articles or publications for peer
9 review or otherwise non-peer review?

10 A Well, again, whatever would be on the CV, that's it.

11 Q So if I -- if I ask you to read it, or -- or
12 would you believe me if I said I don't see any
13 publications dated after 1978?

14 A Oh, certainly.

15 Q Okay. So you'd agree with that last statement
16 that you haven't had any publications, articles,
17 research, peer review or otherwise, since 1978?

18 A Yes.

19 Q Now, you indicated you were brought into this
20 case after receiving the call from Mr. Kratz;
21 correct?

22 A Yes.

23 Q And you're currently employed with Calumet County
24 Department of Human Services in some regard?

25 A No, I'm not. Um, I had a contract with them to

1 provide psychological evaluations. But, um, we let
2 that contract lapse, I believe, in January of 2006.
3 I had done that for several years until then.

4 Q So, a -- again, we'll look back at your
5 Curriculum Vitae, Exhibit 232 before you. If you
6 could take a look at that?

7 A Certainly.

8 Q So I ask you to look at page two?

9 A Um-hmm.

10 Q Where it indicates, employment, consultant
11 psychologist Calumet County Department of Human
12 Services, Chilton, Wisconsin. You see that?

13 A Yes, I do.

14 Q And it says 1997 to blank.

15 A That's right. I probably forgot to put '06 on the
16 CV.

17 Q So just an error?

18 A I'm sorry. What?

19 Q You made an error?

20 A Yes, I made an error.

21 Q So up until 2006, you had a consulting position
22 with Calumet County?

23 A Yes, I did.

24 Q And at that same county Mr. Kratz works in;
25 correct?

1 A Yes.

2 Q You primarily practice in Oshkosh?

3 A No, I would say, by far, the greater part of the work
4 I do now is in Brown County. Specifically, in Green
5 Bay. Although, in recent months, I've been involved
6 in Door County, Kewaunee County, Shawano County,
7 Oconto County, Washington County, uh, so not in any
8 one locale.

9 Q According to your Curriculum Vitae, your office
10 is in Oshkosh, though?

11 A Yes. My office has always been in Oshkosh for
12 20-some years.

13 Q And that's Winnebago County; right?

14 A Yes, it is.

15 Q Are you on any lists in regards to Winnebago
16 County to offer independent medi -- mental health
17 examinations in clinical or forensic psychology?

18 A Yes, I will. I'm -- I'm not sure if they maintain,
19 um, lists, but -- for example, within the fact --
20 past year, I have seen juveniles from Winnebago
21 County who were detained, um, in Appleton in secure
22 detention.

23 I have given opinions to the juvenile
24 courts. Um, I have done a number of, um,
25 forensic evaluations in Winnebago County.

1 I believe it's been about -- little more
2 than a year ago, there was, um, a homicide case
3 there, in which I provided an opinion of a man
4 who had, um, inflicted fatal injuries with a
5 baseball bat.

6 Um, I was involved in Winnebago County
7 in a case, I believe, perhaps, two years ago, of
8 a high school student who had, um, shot another
9 man with a shotgun.

10 Um, I -- I've been involved in a number
11 of cases in Winnebago County.

12 Q What collateral information did you receive and
13 did you review in making your opinion today?

14 A Today?

15 Q Right.

16 A In this case?

17 Q At any time, prior to today, did you review any
18 collateral information provided to you by
19 Mr. Kratz or someone from his office?

20 A Yes, I did.

21 Q And what collateral information did you review?

22 A I received a copy of the, um, motion to permit
23 testimony on suggestibility in this matter. I
24 received copies of the brief in support of that
25 motion, as well as a copy of the brief opposed to

1 that motion.

2 I received a letter from a gentleman
3 named Mr. Buckley. Um, I had a chance to review,
4 um, that letter.

5 And I received a copy of an article
6 entitled, *Suggestibility and Confessions* by a
7 Dr. Trowbridge.

8 And, then, again, the -- the records
9 that we have discussed earlier.

10 Q And the other records would be Dr. Gordon's
11 report; correct?

12 A Yes. I received copies of his test materials, his
13 report, his handwritten notes. Again, whatever had
14 been in his file and was to be provided, um, that's
15 what I received.

16 Q Okay. And nothing else?

17 A I don't recall receiving anything else, no. I did,
18 on my own, look up some information. For example, in
19 test -- um, psychological test -- textbooks, looking
20 at, um, the State Trait tests, and looking for
21 information on the Gudjonsson and the 16-PF. Um, I
22 did photocopy for myself some information out of
23 those textbooks.

24 Q You indicated you were also aware of school
25 records reflecting intelligence scores?

1 A It was my understanding that at some point, yes, that
2 a -- a school counselor had provided some information
3 like that.

4 Q So the intelligence score, in Dr. Gordon's, um,
5 documents, were provided to you in regards to the
6 Wechsler Abbreviated Scale of Intelligence, as
7 well as the Kaufman --

8 A Brief Intelligence Test, yes.

9 Q Correct.

10 A Um-hmm.

11 Q Your testimony, if I understand it correctly, was
12 that the actual school records reflect a lower
13 intelligence score; correct?

14 A Well, my source there was a letter by Mr. Buckley of
15 the John Reid, um, Company who had done a summary,
16 and that was provided to me along with the other
17 records. In there, I noted his comment that a school
18 counselor had either given testimony or a deposition
19 in which it was noted that Mr. Dassey had been tested
20 at three-year intervals three times and had IQ scores
21 in the 70's.

22 Q So Dr. Gordon's evaluation reflected, actually, a
23 higher IQ than the school did?

24 A A little higher, yes. Whether it's a significant or
25 stable difference, I don't know.

1 Q Don't recall asking you that. Did I ask you if
2 it was significantly higher? Or -- I think it
3 was just -- it was higher; correct?

4 A Numerically it's higher, yes.

5 Q Thank you. You indicated that the 16-PF -- you
6 had some concerns with it because it's a
7 mail-order test?

8 A It's not a mail-order test. It's a test which is
9 administered, apparently, by Dr. Gordon or somebody
10 under his direction, but the results are then sent
11 off to a scoring service, which scores the answer
12 sheet and returns, um, a computer-generated test
13 report.

14 Q On direct, when asked to comment about the 16-PF,
15 you commented that one concern with these types
16 of tests, these mail-order tests, are simply not
17 specific enough?

18 A Yes, that's true.

19 Q So when I referred to it a mail-order test a
20 minute ago and you corrected me, I was just
21 repeating what you called it; correct?

22 A Okay. I don't recall if I used the term
23 "mail-order." If I did, I misspoke, because the
24 situation is as I just explained -- explained it.

25 Q And is the 16-PF a test that only Dr. Gordon has

1 access to?

2 A Oh, certainly not. I think any qualified licensed or
3 other psychologist in practice would have access to
4 it.

5 Q So other members of your profession; correct?

6 A Certainly, the publisher of the test would have
7 requirements for a person to qualify as a user. But
8 I think, um, you know, again, any practicing
9 psychologist would meet those standards.

10 Q And would you -- if you have an opinion, would
11 you agree with me that there's probably likely a
12 few more forensic or clinical psychologists, who
13 are qualified, probably have access to and use
14 that type of test?

15 A Oh, I'm sure other ones do.

16 Q You're -- you seem to be critical of the use of
17 the 16-PF by Dr. Gordon in formulating his
18 opinion. Yet, you would agree with me that other
19 psychologists probably use those tests as well;
20 correct?

21 A Um, yes, that's correct.

22 Q So all those other psychologists using the 16-PF,
23 they just must be wrong using that --

24 ATTORNEY KRATZ: Objection, argumentative.

25 THE WITNESS: I don't believe I said

1 that.

2 ATTORNEY FREMGEN: I'll withdraw it.

3 Q (By Attorney Fremgen) You indicated that you're
4 not familiar with the State Trait Anger
5 Expression Inventory?

6 A No, it's not something that I routinely either use
7 myself or encounter in the clinical work I do.

8 Q But you've offered an opinion critical of
9 Dr. Gordon's opinion based upon his use of that
10 test; correct?

11 A No, I tried not to offer any opinion critical of
12 Dr. Gordon. I'm not acquainted with him and I mean
13 no disrespect or discourtesy to him. It is his
14 opinion that my opinion may disagree with. But I
15 would certainly, um, tender full respect and courtesy
16 to Dr. Gordon. I mean no disrespect.

17 Q If I implied that you were criticizing
18 Dr. Gordon, I apologize. I think I was referring
19 to the report. And so to make it clear, I'll
20 just refer to it as Exhibit 231. I think it --
21 Correct? Is it 231?

22 A That's fine.

23 Q Okay. The, uh, MMPI, you actually have some
24 professional or scholarly, um, experience with
25 the MMPI?

1 A I have considerable experience with the MMPI,
2 although more in my first 20 years than, perhaps, in
3 the last five or ten. I do not use it, um,
4 frequently anymore.

5 Q Does the MMPI have some utility in the field of
6 forensic or clinical psychology?

7 A Oh, I believe it does. There are a number of books
8 that have been written on the forensic applications
9 of the MMPI.

10 Q That, too, is a -- a test that is provided -- I
11 won't -- I won't call it a mail-order test, but
12 something provided by a manufacturer, in which
13 you have to send back the, uh, uh, answer sheet
14 and receive, then, their interpretation of the
15 results; correct?

16 A No, that's not entirely correct. The test can be
17 scored by a series of templates by an individual.
18 Um, laying the template over the answer sheet,
19 counting up the numerical scores and the various, um,
20 scales of that test.

21 That can be done. It can be done as a
22 clerical task by a trained secretary, just as the
23 profile of those scores can be drawn.

24 If a person feels competent or qualified
25 or comfortable interpreting the test, the person

1 may go ahead and do that, based upon experience,
2 training, reference books, whatever.

3 There are interpretation services
4 available on a mail basis. In other words, one
5 can either fax or send off the answer sheet to
6 the service of Dr. Butcher and Dr. Williams, or,
7 for example, to another one by a psychologist
8 named Alex Caldwell, who has a very widely
9 respected MMPI interpretation program.

10 But there must be at least eight or ten
11 of those available by mail order. And, um,
12 again, one can mail off the, um, answer sheet and
13 receive back a printed report.

14 Q So it's not unusual to use one of those, as you
15 pointed out, well-respected interpretation, uh,
16 individuals or psychologists who can interpret
17 the results?

18 A Again, some people do it, some people don't. It
19 depends upon one's perceived need for that. If
20 people want to do it, they do it. It's not a
21 standard practice one way or the other.

22 Q Are you familiar with the, uh, studies done by
23 person by the name of Ayling, A-y-l-i-n-g, 1984,
24 pertaining to false confessions?

25 A No, I'm not.

1 Q Any studies by an individual by the name Ofshe,
2 O-f-s-h-e, from 1989, in regards to
3 suggestibility and false confessions?
4 A No, I'm not.
5 Q Have you reviewed any of the Gudjonsson, uh,
6 reports dating back from '83 through 2001
7 pertaining to this issue of suggestibility?
8 A I have not made any effort to review that literature,
9 no.
10 Q Any of the Loftus studies from 1979, 1990? Into
11 the 90's?
12 A No.
13 Q The Kasson or McNall test -- uh, studies in 1991?
14 Are you familiar with those?
15 A No, I'm not.
16 Q So you're not familiar with any of these tests,
17 or, excuse me, studies that deal with the issue
18 of suggestibility or false confessions?
19 A That's what I said. I'm not. Yes.
20 Q Well, you have performed some internet research
21 into the topic?
22 A I did briefly, yes. Um-hmm.
23 Q And I think you said you ran across the term
24 "suggestibility" in one of those articles or some
25 study you -- you referenced on the internet?

1 A Yes, I did find some references to it, as well as to
2 Dr. Gudjonsson.

3 Q Did you have a handbook to interpret how to
4 administer the Gudjonsson Suggestibility Scale?

5 A No, I did not. I've never administered it.

6 Q You've never administered it. And you don't know
7 how to administer the test? Would that be fair
8 to state?

9 A Um, yes, that would be fair.

10 Q Did you actually interview Brendan Dassey?

11 A No, I've had no contact with Mr. Dassey at all.

12 Q Would you agree that, as a psychologist, whether
13 it be clinical or forensic, in order to draw a
14 conclusion about an individual, it's usually best
15 to meet the individual?

16 A I'm -- well, I'm not sure of the meaning of "best."
17 In this case, I was not asked to provide an opinion
18 about Mr. Dassey, specifically, and I was not offered
19 any, um, access to him. So it simply was not the way
20 in which I became involved.

21 I will agree that in most of the work I
22 do, I would provide an evaluation, and my opinion
23 might stand in contrast to someone else's
24 opinion, and those two opinions can then be
25 compared and evaluated by someone. But in this

1 case, um, I was not asked to do that. I was
2 asked to offer opinions regarding the information
3 submitted to the Court.

4 Q Would you agree that then it would be a normal or
5 a standard practice in your field to evaluate an
6 individual before offering a -- an opinion about
7 that person?

8 ATTORNEY KRATZ: Objection. Asked and
9 answered, Your Honor.

10 ATTORNEY FREMGEN: Actually, I don't
11 believe I asked that exact question.

12 THE COURT: Overruled. You may answer.

13 THE WITNESS: No, it would not be a
14 standard of practice for me to do something that
15 I had not been, specifically, asked to do. That
16 is not a standard of practice.

17 Q That -- that wasn't the question I asked you. I
18 understand that you weren't asked to do that and
19 I'll grant you that. But is it a standard
20 practice in your field, if the person is
21 offering -- if the psychologist is offering an --
22 an opinion as to a particular person, that they
23 would actually provide an individual or personal
24 interview or evaluation of that?

25 A On that, I would agree with you. It is expected that

1 if I were to offer an opinion, specifically, about
2 Mr. Dassey, it would be unethical for me to do that
3 without at least attempting to personally evaluate or
4 examine him in developing that opinion.

5 And I would be justified in not meeting
6 with him only if he refused to participate.

7 But, um, that is not the case here. I
8 have not been asked to provide any specific
9 opinion or evaluation of Mr. Dassey. The focus
10 of my attention has been on Dr. Gordon's report
11 and the information that Dr. Gordon submitted to
12 the Court.

13 Q You -- you've agreed or indicated that you have
14 no familiarity with the research in regards to
15 suggestibility other than having ran across the
16 term during the inter -- internet research prior
17 to testifying today?

18 A Yes, I believe I've said that.

19 Q And despite that, your conclusion is Dr. Gordon's
20 conclusions are incorrect?

21 A Uh, my opinion responding that information is
22 different than the conclusion he reached, it is not
23 for me to say whether he is correct or incorrect.
24 Um, but the conclusions I would reach on the basis of
25 that information might be different than the

1 conclusion that he reached. I'm not saying he's
2 wrong.

3 Q And, hypothetically, if he has reviewed the
4 standard or typical research in the area of
5 suggestibility, he would have more information to
6 base his opinion on than you?

7 A I don't agree with that at all.

8 Q You don't agree that you have no familiarity with
9 any of the research in the area of suggestibility
10 at --

11 ATTORNEY KRATZ: Objection, Judge, that
12 wasn't the question.

13 THE COURT: No, he's asking the
14 question. Overruled.

15 THE WITNESS: Would you repeat the
16 question, sir?

17 Q Sure. I'll do the best I can.

18 A Uh-huh.

19 Q You have no familiarity in the research of
20 suggestibility. Yet, you've been able to provide
21 an opinion as to what Dr. Gordon's conclusions --
22 or your opinion of Dr. Gordon's conclusions;
23 correct?

24 A Um, yes, I think that's true. But the focus of my
25 opinion was on the basis -- and the -- the problems

1 that I recognized in the Gudjonsson methodology,
2 would not justify me in reaching the conclusion he
3 reached.

4 Q The Gudjonsson methodology or the Gudjonsson
5 example that was provided to you?

6 A Well --

7 Q Test example. I'm sorry.

8 A The scale, as I see it, which was supposed to
9 originate in his file, for the reasons that I pointed
10 out, I would not have, um, confidence, myself, in
11 concluding that that methodology relates to
12 suggestibility.

13 Just because someone titles a test a
14 suggestibility test, does not make it a
15 suggestibility test.

16 Q Oh, I agree with you entirely.

17 A It might well be a memory test, or a concentration
18 test, or something else. So, I'm just saying I would
19 not have reached the conclusion he reached.

20 Q I -- I understand you entirely, Doctor. And --
21 and will you agree with me, then, with this, if
22 you haven't reviewed Gudjonsson, for instance,
23 and you don't know the research and the
24 methodology behind the test, how can you say that
25 the methodology and the test isn't correct?

1 A We're not talking about correctness. I -- I will
2 stand on the comments I made earlier about the
3 methodology used. About not assessing the memory and
4 not understanding why a person's changing answers to
5 a response after being told he's wrong, why that
6 relates to suggestibility. It -- it simply is not a
7 connection I, myself, would make, personally or
8 professionally.

9 Q And, granted, coming from a person that has no
10 familiarity with the research into that area;
11 correct?

12 A Yes, that's true.

13 ATTORNEY FREMGEN: Thank you. Nothing
14 else, Judge.

15 THE COURT: Any redirect?

16 ATTORNEY KRATZ: I don't think so, Judge.
17 Thank you.

18 THE COURT: All right. You may step
19 down, Doctor.

20 ATTORNEY KRATZ: Ask the Court receive his
21 CV.

22 THE COURT: Oh. Okay. Any objection to
23 the CV?

24 ATTORNEY FREMGEN: Same conditions as
25 before, Judge.

1 THE COURT: Sure.

2 ATTORNEY FREMGEN: No.

3 THE COURT: Two thirty-two, then, is
4 offered and received.

5 ATTORNEY KRATZ: Did the Court anticipate
6 an afternoon break? If it did --

7 THE COURT: Right now.

8 ATTORNEY KRATZ: If it did, uh, we'd ask
9 for an opportunity to meet with the Court briefly
10 in chambers. And this, uh, is a good time for an
11 afternoon break. Thank you.

12 THE COURT: All right. We'll, uh --
13 we'll recess until 20 to 4.

14 (Recess had at 3:20 p.m.)

15 (Reconvened at 3:46 p.m. Jury in)

16 THE COURT: Mr. Kratz, do you have any
17 further witnesses this afternoon?

18 ATTORNEY KRATZ: We have no further
19 rebuttal, Judge.

20 THE COURT: No further witnesses at all?

21 ATTORNEY KRATZ: No.

22 THE COURT: All right. So, the State is
23 then resting?

24 ATTORNEY KRATZ: The State is, uh, resting
25 its rebuttal, yes, Judge.

1 THE COURT: All right. Uh, any surrebuttal
2 being offered by the defense?

3 ATTORNEY FREMGEN: No, Judge.

4 THE COURT: All right. Uh, that concludes,
5 then, the presentation of testimony in the case.
6 Uh, ladies and gentlemen, we're going to adjourn
7 this afternoon. We are going to -- we, counsel and
8 the Court, uh, uh, will prepare a set of jury
9 instructions for you, and tomorrow you will hear the
10 jury instructions and you will hear closing argument
11 from counsel.

12 Uh, I ask that you be back here by
13 10:00 tomorrow morning. All right? And, again,
14 don't talk about the case among yourselves or
15 anything having to do with the case.

16 (Jury out at 3:45 p.m.)

17 THE COURT: Any further matters this
18 afternoon, gentlemen?

19 ATTORNEY KRATZ: No, Judge. I assume we'll
20 have an informal, uh, jury instruction conference in
21 chambers at about, uh, 8:00. Sometime thereafter, I
22 assume we will have the formal jury conference, uh,
23 on the record, and move to closings thereafter?

24 THE COURT: We'll -- we'll meet at 8:00 in
25 chambers to review and see if the -- the jury

1 instructions are -- are ones that all can agree
2 upon. And, if they can't, we'll, uh -- we'll go on
3 the record and the Court will make whatever
4 decisions are necessary. Uh, and if there are any
5 motions, we'll hear them at that time.

6 ATTORNEY KRATZ: That's fine. Thank you,
7 Judge.

8 THE COURT: All right. We're adjourned.

9 (Court stands adjourned at 3:47 p.m.)
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1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.

16
17
18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 3

3
4 STATE OF WISCONSIN,

5 PLAINTIFF, JURY TRIAL
6 TRIAL DAY 9

7 vs. Case No. 06 CF 88

8 BRENDAN R. DASSEY,

9 DEFENDANT.

10 **DATE:** APRIL 25, 2007

11 **BEFORE:** HON. JEROME L. FOX
12 Circuit Court Judge

13 **APPEARANCES:**

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

17 THOMAS FALLON
18 Special Prosecutor
19 On behalf of the State of Wisconsin.

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

23 MARK R. FREMGEN
24 Attorney at Law
25 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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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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1 (Reconvened at 10:30 a.m.)

2 THE COURT: Good morning, counsel. This is
3 State of Wisconsin vs. Brendan Dassey, 88 CF -- or,
4 excuse me -- uh, 06 88 CF. Uh, appearances, please.

5 ATTORNEY KRATZ: The State of Wisconsin
6 appears by Calumet County District Attorney Ken
7 Kratz, Assistant Attorney General Tom Fallon,
8 Assistant District Attorney Norm Gahn, appearing
9 as special prosecutors.

10 ATTORNEY FREMGEN: Attorney Mark Fremgen
11 with Attorney Ray Edelstein appear. Uh, Brendan
12 Dassey appears in person.

13 THE COURT: All right. Uh, first, to the
14 prosecution, any motions before we proceed to the
15 jury?

16 ATTORNEY KRATZ: Yes, Judge. We, uh --
17 we have moved, uh, the Court, uh, for an order
18 amending the Information, amending Count 3, uh,
19 to second degree sexual assault as a party to the
20 crime. Section 971.29 (2), uh, allows, uh, the
21 Court to amend an Information to conform to the
22 proof where the amendment is not prejudicial to
23 the defendant. We alerted, uh, the Court and
24 counsel, uh, as to our intent to do so, uh, given
25 the, uh, state of the record.

1 Uh, State believes that second degree
2 sexual assault, uh, more accurately and
3 appropriately reflects the, uh, individual
4 behavior of this defendant, uh, Brendan Dassey,
5 and we have provided the Court with the original
6 Amended, uh, Information. Copy's been provided
7 to Mr. Fremgen.

8 THE COURT: Mr. Fremgen, do you have any
9 objection to that proposed amendment?

10 ATTORNEY FREMGEN: To the amendment, no.

11 THE COURT: Court is going to grant the
12 amendment. Any further motions from the State?

13 ATTORNEY KRATZ: Not from the State,
14 Judge.

15 THE COURT: The defendant?

16 ATTORNEY FREMGEN: Judge, we would renew
17 our motion, uh, now that all the evidence has
18 been presented and both parties have had -- or
19 the State's had an opportunity to do rebuttal,
20 but I would move, again, as previously, uh --
21 we -- we move this Court, following the close of
22 the State's case in chief, based on -- uh,
23 essentially, moving to dismiss Count 3, whether
24 it be now the amended Count 3.

25 Uh, again, rather than belabor the

1 argument before, essentially, uh, I would point
2 out to the Court the Supreme Court case of 1978,
3 **State v. Verhasselt**, which I don't think that law
4 has changed since then. In fact, the Court had
5 mentioned **State v. Bannister** case, 2006 case, and
6 I was able to review that. It appears to,
7 basically, reflect the same state of the law.

8 Uh, but, essentially, the state of the
9 law is that one may not be convicted solely upon
10 their uncorroborated confession. In the
11 **Verhasselt** case, the quote, uh, is basically,
12 quoting **Holt**, which is the more seminal case from
13 1962, but, essentially, indicates as to the need
14 for corroborating evidence, all the evidence --
15 all the elements of the crime do not have to be
16 proved independently in a -- of an accused's
17 confession. It's enough that there be some
18 corroboration.

19 Our position is that there has been no
20 independent corroboration of any element of Count
21 3, and for that reason, we'd ask the Court to
22 dismiss.

23 THE COURT: Mr. Kratz?

24 ATTORNEY GAHN: Your Honor, I'll be, um,
25 handling this portion of this motion.

1 THE COURT: Mr. Gahn.

2 ATTORNEY GAHN: Um, thank you, Your
3 Honor. Um, I have also read the **State v.**
4 **Bannister** at, uh, 294 Wis. 2d 359, a 2006
5 decision. And upon reading **Bannister**, it, uh --
6 is there are so many, uh, significant differences
7 between this case and the **Bannister** case.

8 Um, the **Bannister** case, uh, basically,
9 stated there was absolutely no real trial
10 testimony elaborating on almost any fact of the
11 confession. No details flushing out anything
12 surrounding the confession. Uh, they even noted
13 that there wasn't any testimony about what --
14 what room a transaction took place in, or how a
15 visit was set up for that drug transaction.

16 When you look at this case from the very
17 beginning, we have stipulated facts of why Teresa
18 Halbach was at the Avery Salvage Yard, her
19 purpose for being there for *Auto Trader Magazine*.
20 We have testimony from Bobby Dassey stating that
21 the last time he saw her, she was walking towards
22 the Avery trailer. And in the Avery trailer was
23 the bedroom where this sexual assault took place.
24 So, we -- she is at the scene of, um, where the
25 sexual assault took place.

1 Um, Mr., uh, Dassey spoke about the hand
2 irons and leg irons. That she was shackled to
3 that bed. Um, hand irons and leg irons have been
4 introduced in this trial as exhibits.

5 Uh, during his, uh, questioning and his
6 confession, he spoke about, uh, seeing and
7 observing the, um, unclothed body of Teresa
8 Halbach. Uh, there was no -- the -- no mention
9 of a tattoo or scars or birth marks or anything
10 unusual.

11 Um, this, I think, goes to the
12 surrounding facts and circumstances. I think,
13 also, noteworthy about the location of this
14 assault, the bedroom, was that, uh, Brendan
15 Dassey spoke of the location of the bed, and I
16 note Detective Wiegert, uh, stated how there
17 was -- they were somewhat perplexed when he gave
18 the location of the bed. And, then, they came to
19 find out that that bed had been changed. That
20 the furniture had been rearranged. And that, I
21 think, is a very significant fact about the
22 location of the sexual assault.

23 Uh, and just the change of furniture, I
24 think, is consistent with all the inferences that
25 one can draw, uh, from this case, uh, something

1 very horrific took place in that room, and, um,
2 I -- I think it goes to the, uh -- the inference
3 that, uh, cleaning was done. Bleach was found,
4 the Bissell, uh, the vacuum cleaner, and, uh,
5 Brendan Dassey spoke of cleaning up that took
6 place. And I think that seeing the furniture
7 moved is a reasonable inference, uh, that
8 supports that.

9 Also, um, I think that the -- just the
10 lack of physical evidence and forensic evidence
11 is consistent with the facts that have been
12 derived in this case. And from the statements of
13 Brendan Dassey, they burned the body of Teresa
14 Halbach.

15 We had testimony from Katie Halbach
16 describing the jeans that she believed her sister
17 was wearing, and the rivets were found in this
18 fire, and the zipper, uh, the Daisy Fuentes
19 rivets. And we also have outside testimony from,
20 um, Mr. Tadych, in a stipulation, that he saw a
21 huge fire in the burn pit of, uh, Steven Avery on
22 the night of October 31. Same testimony from
23 Blaine Dassey.

24 Um, I think, also, the Court to -- could
25 consider, um, that the victim knew her assailant.

1 She knew who was as -- um, assaulting her and
2 sexually assaulting her. And Brendan Dassey
3 spoke about the conversations he had with Steven
4 about then killing her.

5 And this was not a stranger sexual
6 assault. This is one that, uh, the victim knew
7 her assailants. And, really, the only course,
8 unfortunately, that I think they decided to take
9 was to kill the person. The only person who
10 could identify them.

11 And probably most noteworthy in this
12 case, is in the **Bannister** decision, the, um,
13 Court noted that, um, furthermore, they're
14 referring to Bannister's confession, did not
15 yield any unusual information or circumstances
16 that would not be widely known.

17 And I think that is probably the key
18 sentence in that, uh, decision that applies to
19 this case, especially when, after the confession
20 of Brendan Dassey, he spoke of her being killed
21 and shot in the garage, and in the garage is
22 found the bullet. The bullet which has the DNA
23 of Teresa Halbach on it. And that bullet, which
24 was matched to the very gun, to the exclusion of
25 all other guns, which was found in the bedroom

1 of, uh, where the sexual assault took place.

2 So, Brendan Dassey was in that bedroom.
3 He knew where the gun was. He told the police
4 where it was. And, sure enough, doesn't that
5 match the, um, bullet that was found in the
6 garage.

7 I think, um, I could go on. There are
8 other, uh, distinguishing features between our
9 situation and the **Bannister** case, but I certainly
10 believe that we have, uh, given far beyond, uh,
11 sufficient information from a reasonable
12 inference of all the evidence, the totality of
13 every -- all the testimony, that, uh, their
14 motion -- uh, that we did not provide independent
15 corroboration is without merit. Thank you, Your
16 Honor.

17 THE COURT: Any response, Mr. Fremgen?

18 ATTORNEY FREMGEN: Uh, briefly, Judge.
19 Uh, much of what Mr. Gahn points out, as far as
20 corroborating detail, certainly corroborates the
21 first degree intentional homicide and mutilating
22 the corpse.

23 The -- the quotation from **Verhasselt**,
24 which quotes **Holt** and **Triplett** and all the other
25 cases that have come down over the years dealing

1 with this issue, says, the elements of the crime.
2 None of the corroborating details pointed out by
3 the State have anything connected whatsoever to
4 do with Count 3.

5 Um, even many of the items, or the
6 comments by, uh, the State in regards to
7 corroborating details, are -- are not so
8 corroborating. The bedroom drawing is not
9 entirely accurate. The tattoo comment. Uh, in
10 the video, he actually, when confronted by Agent
11 Fassbender, uh, when he says, do you disagree
12 with me that there was no tattoo, he says, no.
13 Um, uh, or, I'm sorry, disagree with me that
14 there is a tattoo, he says, no, I just don't know
15 where it is.

16 As to the handcuffs and leg irons, the
17 State brought handcuffs and leg irons from his
18 own house. Um, nothing that points to its use in
19 the -- the crime, or the alleged allegations,
20 but -- but they were addressed as well.

21 And, once again, the issue of the
22 clean-up, uh, one -- on one hand, the State says
23 there was such a meticulous job done to clean up
24 the bedroom, yet, uh, Steven Avery's sloppy
25 enough to leave his blood all over the Rav 4. It

1 just seems to be somewhat inconsistent.

2 So, we would, again, stand upon the fact
3 that there is no corroborating detail of the
4 elements of this crime.

5 THE COURT: All right. I think Wisconsin
6 case law is clear, a confession must be corroborated
7 by -- and this is a quote from **Holt**, which Counsel
8 has cited -- a significant fact. Uh, **Holt** is at 17
9 Wis. 2d. This is at page 480.

10 Uh, here, in this case, we have three
11 counts charging acts which occurred
12 contemporaneously. The Court believes that the
13 confession given by this defendant is
14 corroborated by a number of significant facts;
15 the bullet fragments, the pieces of bone, the
16 rake and the shovel, to name just a few. This is
17 sufficient corroboration for the confession as a
18 whole, and that whole includes the sexual
19 assault.

20 The reason underlying the necessity of
21 corroboration is, as was said in **State v. Hauk** at
22 257 Wis. 2d 579, uh, specifically, at page 592,
23 is to, quote, produce confidence in the
24 truthfulness of the confession, end quote. This
25 confession is not limited to only the sexual

1 assault. Therefore, significant facts tending to
2 support any part of the confession, support or
3 tend to support all of that con -- confession.

4 Moreover, even if I were to view the
5 sexual assault count in isolation, I would say,
6 as I already have, that there exists, uh,
7 significant facts which corroborated the
8 handcuffs, the leg irons, uh, as Mr. Gahn pointed
9 out, uh, the location of the bed as shown in the
10 drawing, which was introduced here as an exhibit,
11 a drawing of Brendan Dassey. Uh, therefore, I'm
12 going to do as I did before. I'm going to
13 deny -- respectfully deny your motion.

14 Now, uh, we have had a chambers jury
15 conference. Uh, you gentlemen have had an
16 opportunity to review the proposed jury
17 instructions. Uh, first, to the, uh,
18 prosecution, any -- any changes? Any motions?

19 ATTORNEY KRATZ: No, Judge. We believe
20 that the instructions -- And the Court is
21 correct, we've had an informal, um, jury
22 instruction conference, where, um, most, if not
23 all, of these instructions were discussed.

24 We have now reviewed the, uh, proposed
25 instructions. We have no objection to the

1 instructions as presented, nor as to the verdict
2 forms, uh, as included and set forth within those
3 instructions.

4 THE COURT: I -- I would -- uh, I would
5 just note, uh, I believe that I amended Instruction
6 525, uh, to make it conform to one that was given in
7 the Avery case. Uh, I didn't have an opportunity to
8 tell you that before then, but the amendment doesn't
9 do anything substantively to it.

10 Now, to the defense.

11 ATTORNEY EDELSTEIN: Your Honor, as to
12 the -- as to the, uh, packet most recently
13 received, uh, we concur with those that are --
14 have been made available. I would, for the
15 record, um, ask the Court to enter its ruling on
16 the record regarding the defense instruction
17 specifically requested, uh, re -- requesting that
18 an instruction be provided regarding
19 corroboration.

20 THE COURT: The defense had customized a --
21 construc -- uh, a -- an instruction that, uh, in
22 effect, would have told the jury that before they
23 could find the confession to be a valid confession,
24 it had to be corroborated by a -- well, I'm going to
25 call it a significant fact -- had to be corroborated

1 by something in the record. Uh, the Court
2 suggested, in the informal conference, that while it
3 had reviewed that instruction, it was going to deny,
4 uh, the defense motion to employ it as part of the
5 jury instructions.

6 I will now do so formally. I'll deny it
7 on the record. I do not believe -- I believe
8 that the, uh, instruction on confession is, uh,
9 sufficiently detailed in the course of the
10 instruction that's going to be used as part of
11 this particular jury instruction. I've forgotten
12 whether it's 180 --

13 ATTORNEY FREMGEN: I believe it's 180.

14 THE COURT: 180? All right. And I think
15 that -- yeah, it is. Instruction No. 180 deals with
16 confessions and omis -- admissions, and I think that
17 that is the appropriate instruction. I do not
18 believe that, uh, giving what, in effect, is a legal
19 argument as part of the instruction as requested by
20 the defense is appropriate under the circumstances.
21 Therefore, I'll respectfully deny your motion.

22 Now, what I'd like to do is to make, uh,
23 15 copies of this set of instructions. I'd like
24 the jury to have them as I read them to them.
25 And it probably is going to take another ten

1 minutes to do that. So, I'm going to recess for
2 that period of time.

3 (Recess had at 10:45 a.m.)

4 (Reconvened at 10:58 a.m. Jury in)

5 THE COURT: Be seated. Morning, ladies and
6 gentlemen. In a moment, I'm going to be reading you
7 the instructions. The jury instructions. As you
8 can see, excuse me, um, the clerk is handing copies
9 of those instructions out. You can see how well I
10 read, I suppose, by trying to follow along with me.

11 Uh, you certainly can and are urged to
12 follow along. However, once closing argument has
13 begun by counsel, I ask that you put those down
14 and pay attention to, uh -- to what the lawyers
15 have to say in the closing argument.

16 Uh, additionally, just -- just so you
17 know, at the -- at the end of closing argument,
18 before you retire for deliberation, we will --
19 the clerk will have a little drum up here and
20 we're going to draw three names, the names of
21 three jurors out of that drum. The first two
22 will be discharged as jurors, and the third will
23 be sequestered for the remaining, uh, part of
24 the -- the deliberations. All right?

25 With that said, Members of the Jury, the

1 Court will now instruct you upon the principles
2 of law which you are to follow in considering the
3 evidence and in reaching your verdict.

4 It is your duty to follow all of these
5 instructions. Regardless of any opinion you may
6 have about what the law is or ought to be, you
7 must base your verdict on the law I give you in
8 these instructions. Apply that law to the facts
9 in the case which have been properly proven by
10 the evidence. Consider only the evidence
11 received during the trial and the law as given to
12 you by the instructions, and from these alone,
13 guided by your soundest reason and best judgment,
14 reach your verdict.

15 If any member of the jury has any
16 impression of my opinion as to whether the
17 defendant is guilty or not guilty, disregard that
18 impression entirely and decide the issues of fact
19 solely as you view the evidence. You, the jury,
20 are the sole judges of the facts, and the Court
21 is the judge of the law only.

22 One defendant, three counts.

23 The first count of the Amended
24 Information in this case charges Brendan Dassey,
25 on October 31, 2005, as a party to a crime, did

1 cause the death of Teresa M. Halbach, with the
2 intent to kill that person, contrary to Sections
3 940.01(1)(a), 939.50(3)(a), and 939.05 of the
4 Wisconsin Statutes.

5 To this charge, the defendant has
6 entered a plea of not guilty, which means the
7 State must prove every element of the offense
8 charged beyond a reasonable doubt.

9 The second count of the Amended
10 Information charges that Brendan Dassey, on
11 October 31, 2005, as a party to the crime, did
12 mutilate, disfigure, or dismember a corpse with
13 the intent to conceal a crime, contrary to
14 Sections 940.11(1), 939.50(3)(f), and 939.05 of
15 the Wisconsin Statutes.

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

20 The third count of the Amended
21 Information charges that Brendan Dassey, on
22 October 31, 2005, as a party to a crime, by
23 threat or use of force or violence, did have
24 sexual intercourse with Teresa Halbach, without
25 the consent of that person, contrary to Sections

1 940.225(2)(a), 939.50(3)(c), and 939.05 of the
2 Wisconsin Statutes.

3 To this charge, the defendant has also
4 entered a plea of not guilty, which means the
5 State must prove every element of the offense
6 charged beyond a reasonable doubt.

7 First degree intentional homicide.
8 First degree reckless homicide. Party to a
9 crime, aiding and abetting. Defendant either
10 directly committed or intentionally aided the
11 crime charged.

12 Section 939.05 of the Criminal Code of
13 Wisconsin provides that whoever's concerned in
14 the commission of a crime is a party to that
15 crime and may be convicted of that crime although
16 the person did not directly commit it.

17 The State contends that the defendant
18 was concerned in the commission of the crime of
19 first degree intentional homicide by either
20 directly committing it or by intentionally aiding
21 and abetting the person who directly committed
22 it. If a person intentionally aids and abets the
23 commission of a crime, then that person is guilty
24 of the crime as well as the person who directly
25 committed it.

1 A person who intention -- a person
2 intentionally aids and abets the commission of a
3 crime when, acting with knowledge or belief that
4 another person is committing or intends to commit
5 a crime, he either knowingly assists the person
6 who commits the crime or is ready and willing to
7 assist, and the person who commits the crime
8 knows of the willingness to assist.

9 To intentionally aid and abet first
10 degree intentional homicide, the defendant must
11 know that another person is committing or intends
12 to commit the crime of first degree intentional
13 homicide and have the purpose to assist the
14 commission of that crime.

15 Before you may find the defendant
16 guilty, the State must prove by evidence which
17 satisfies you beyond a reasonable doubt that the
18 defendant directly committed the crime of first
19 degree intentional homicide or intentionally
20 aided and abetted the commission of that crime.

21 All 12 jurors do not have to agree
22 whether the defendant directly committed the
23 crime or aided and abetted the commission of the
24 crime. However, each juror must be convinced
25 beyond a reasonable doubt that the defendant was

1 concerned in the commission of the crime in one
2 of these ways.

3 The defendant in this case is charged
4 with first degree intentional homicide, and if --
5 you must first consider whether the defendant is
6 guilty of that offense. If you are not satisfied
7 that the defendant is guilty of first degree
8 intentional homicide, you must consider whether
9 or not the defendant is guilty of first degree
10 reckless homicide, which is a less serious degree
11 of criminal homicide.

12 The crimes referred to as first degree
13 intentional and first degree reckless homicide
14 are different types of homicide. Homicide is the
15 taking of the life of another human being. The
16 degree of homicide defined by the law depends on
17 the facts and circumstances of each particular
18 case.

19 Both intentional and reckless homicide
20 require that the defendant caused the death of
21 the victim. First degree intentional homicide
22 requires the State to prove that the defendant
23 acted with the intent to kill. First degree
24 reckless homicide requires that the defendant
25 acted recklessly, under circumstances which show

1 utter disregard for human life. It is for you to
2 consider of what type of homicide the defendant
3 is guilty, if guilty at all, according to the
4 instructions which define the two offenses.

5 The statutory definition of first degree
6 intentional homicide.

7 First degree intentional homicide as
8 defined in 940.01 of the Criminal Code of
9 Wisconsin, is committed by one who causes the
10 death of another human being with the intent to
11 kill that person or another.

12 Before you may find the defendant guilty
13 of first degree intentional homicide, the State
14 must prove by evidence which satisfies you beyond
15 a reasonable doubt that the following two
16 elements were present:

17 Number one, the defendant, or a person
18 with whom he was acting as a party to the crime,
19 caused the death of Teresa Halbach.

20 "Cause" means that the defendant's act,
21 or that the act of a person with whom he was
22 acting as a party to the crime, was a substantial
23 factor in producing the death.

24 Number two, the defendant, or a person
25 with whom he was acting as a party to the crime,

1 acted with the intent to kill Teresa Halbach.

2 "Intent to kill" means that the
3 defendant, or a person with whom he was acting as
4 a party to the crime, had the mental purpose to
5 take the life of another human being or was aware
6 that his conduct was practically certain to cause
7 the death of another human being.

8 While the law requires that the
9 defendant, or a person with whom he was acting as
10 a party to the crime, acted with intent to kill,
11 it does not require that the intent existed for
12 any particular length of time before the act is
13 committed. The act need not be brooded over,
14 considered, or reflected upon for a week, a day,
15 an hour, or even for a minute. There need not be
16 any appreciable time between the formation of the
17 intent and the act. The intent to kill may be
18 formed at any time before the act, including the
19 instant before the act, and must continue to
20 exist at the time of the act.

21 You cannot look into a person's mind to
22 find intent. Intent to kill must be found, if
23 found at all, from the defendant's acts, words,
24 and statements, if any, or those of a person with
25 whom he was acting as a party to the crime, and

1 from all the facts and circumstances in this case
2 bearing upon intent.

3 Intent should not be confused with
4 motive. While proof of intent is necessary to a
5 conviction, proof of motive is not. "Motive"
6 refers to a person's reasons for doing something.
7 While motive may be shown as a circumstance to
8 aid in establishing the guilt of a defendant, or
9 a person with whom he was acting as a party to
10 the crime, the State is not required to prove
11 motive on the part of the defendant, or a person
12 with whom he was acting as party to the crime, in
13 order to convict. Evidence of motive does not,
14 by itself, establish guilt. You should give it
15 the weight you believe it deserves under all the
16 circumstances.

17 If you are satisfied beyond a reasonable
18 doubt that the defendant caused the death of
19 Teresa Halbach, with the intent to kill, or are
20 satisfied beyond a reasonable doubt that the
21 defendant intentionally aided and abetted the
22 commission of the offense, you should find the
23 defendant guilty of first degree intentional
24 homicide.

25 If you are not so satisfied, you must

1 find the defendant not guilty of first degree
2 intentional homicide, and you should consider
3 whether the defendant is guilty of first degree
4 reckless homicide in violation of 940.02(1) of
5 the Criminal Code of Wisconsin, which is a lesser
6 included offense of first degree intentional
7 homicide.

8 You should make every reasonable effort
9 to agree unanimously on the charge of first
10 degree intentional homicide before considering
11 the offense of first degree reckless homicide.
12 However, if, after full and complete
13 consideration of the evidence, you conclude that
14 further deliberation would not result in
15 unanimous agreement on the charge of first degree
16 intentional homicide, you should consider whether
17 the defendant is guilty of first degree reckless
18 homicide.

19 First degree reckless homicide, as
20 defined in 940.02(1) of the Criminal Code of
21 Wisconsin, is committed by one who recklessly
22 causes the death of another human being under
23 circumstances that show utter disregard for human
24 life.

25 Before you may find the defendant guilty

1 of first degree reckless homicide, the State must
2 prove by evidence which satisfies you beyond a
3 reasonable doubt that the following three
4 elements were present:

5 Number one, the defendant, or a person
6 with whom he was acting as a party to the, uh --
7 the crime, caused the death of Teresa Halbach.

8 "Cause" means that the defendant's act,
9 or the act of a person with whom he was acting as
10 a party to the crime, was a substantial factor in
11 producing the death.

12 Number two, the defendant, or a person
13 with whom he was acting as a party to the crime,
14 caused the death by crimlin -- criminally
15 reckless conduct.

16 "Criminally reckless conduct" means the
17 conduct created a risk of death or great bodily
18 harm to another person, and the risk of death or
19 great bodily harm was unreasonable and
20 substantial, and the defendant, or a person with
21 whom he was acting as a party to the crime, was
22 aware that his conduct created the unreasonable
23 and substantial risk of death or great bodily
24 harm.

25 Number three, the circumstances of the

1 defendant's conduct, or the conduct of a person
2 with whom he was acting as a party to the crime,
3 showed utter disregard for human life.

4 In determining whether the conduct
5 showed utter disregard for human life, you should
6 consider all the factors relating to the conduct.
7 These include the following:

8 What the defendant, or a person with
9 whom he was acting as a party to the crime, was
10 doing.

11 Why the defendant, or a person with whom
12 he was acting as a party to the crime, was
13 engaged in that conduct.

14 How dangerous the conduct was.

15 How obvious the danger was.

16 And whether the conduct showed any
17 regard for life.

18 If you are satisfied beyond a reasonable
19 doubt that the defendant caused the death of
20 Teresa Halbach by criminally reckless conduct,
21 and that the circumstances of the conduct showed
22 utter disregard for human life, or are satisfied
23 beyond a reasonable doubt that the defendant
24 intentionally aided and abetted the commission of
25 the offense, you should find the defendant guilty

1 of first degree reckless homicide.

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

4 You are not, in any event, to find the
5 defendant guilty of more than one homicide
6 offense.

7 Mutilating a corpse. Party to a crime.
8 Aiding and abetting. The defendant either
9 directly committed or intentionally aided the
10 crime charged.

11 Section 939.05 of the Criminal Code of
12 Wisconsin, provides that whoever is concerned
13 with the commission of a crime is a party to that
14 crime and may be convicted of that crime although
15 the person did not directly commit it.

16 The State contends that the defendant
17 was concerned in the commission of the crime of
18 mutilating a corpse by either directly committing
19 it or by intentionally aiding and abetting the
20 person who directly committed it. If a person
21 intentionally aids and abets the commission of a
22 crime, then that person is guilty of the crime as
23 well as the person who directly committed it.

24 Person intentionally aids and abets the
25 commission of a crime when, acting with knowledge

1 or belief that another person is committing or
2 intends to commit a crime, he knowingly either
3 assists the person who commits the crime, or is
4 ready and willing to assist, and the person who
5 commits the crime knows of the willingness to
6 assist.

7 To intentionally aid and abet mutilating
8 a corpse, the defendant must know that another
9 person is committing or intends to commit the
10 crime of mutilating a corpse and have the purpose
11 to assist the commission of that crime.

12 Before you may find the defendant
13 guilty, the State must prove by evidence which
14 satisfies you beyond a reasonable doubt that the
15 defendant directly committed the crime of
16 mutilating a corpse or intentionally aided and
17 abetted the commission of that crime.

18 All 12 jurors do not have to agree
19 whether the defendant directly committed the
20 crime or aided and abetted the commission of the
21 crime. However, each juror must be convinced
22 beyond a reasonable doubt that the defendant was
23 concerned in the commission of the crime in one
24 of those ways.

25 Section 940.11(1) of the Criminal Code

1 of Wisconsin, is violated by one who mutilates,
2 disfigures, or dismembers a corpse with
3 intention -- intent to conceal a crime or avoid
4 apprehension, prosecution or conviction for a
5 crime.

6 Before you may find the defendant guilty
7 of this offense, the State must prove by evidence
8 which satisfies you beyond a reasonable doubt
9 that the following two elements were present:

10 Number one, the defendant, or a person
11 with whom he was acting as a party to the crime,
12 mutilated, disfigured or dismembered a corpse.
13 "Corpse" means the dead body of a human being.

14 Number two, the defendant, or a person
15 with whom he was acting as a party to the crime,
16 mutilated, disfigured or dismembered a corpse
17 with the intent to conceal a crime. This
18 requires that the defendant, or a person with
19 whom he was acting as a party to the crime, acted
20 with the purpose to conceal a crime.

21 You cannot look into a person's mind to
22 find out intent. Intent must be found, if found
23 at all, from the defendant's acts, words, and
24 statements, if any, or those of a person with
25 whom he was acting as a party to the crime, and

1 from all the facts and circumstances in this case
2 bearing upon intent.

3 If you are satisfied beyond a reasonable
4 doubt that both elements of this offense have
5 been proved, or are satisfied beyond a reasonable
6 doubt that the defendant -- defendant
7 intentionally aided and abetted in the commission
8 of the offense, you should find the defendant
9 guilty.

10 If you are not so satisfied, you must
11 find the defendant not guilty.

12 Second degree sexual assault. Party to
13 a crime. Aiding and abetting. The defendant
14 either charged -- uh, either directly committed
15 or intentionally aided the crime charged.

16 Section 939.05 of the Criminal Code of
17 Wisconsin, provides that whoever is concerned in
18 the commission of a crime, is a party to that
19 crime and may be convicted of that crime although
20 the person did not directly commit it.

21 The State contends that the defendant
22 was concerned in the commission of the crime of
23 second degree sexual assault by either directly
24 committing it or by intentionally aiding and
25 abetting the person who directly committed it.

1 If a person intentionally aids and abets the
2 commission of a crime, then that person is guilty
3 of the crime as well as the person who directly
4 committed it.

5 A person intentionally aids and abets
6 the commission of a crime when, acting with
7 knowledge or belief that another person is
8 committing or intends to commit a crime, he
9 knowingly either assists the person who commits
10 the crime, or is ready and willing to assist, and
11 the person who commits the crime knows of the
12 willingness to assist.

13 To intentionally aid and abet second
14 degree sexual assault, the defendant must know
15 that another person is committing or intends to
16 commit the crime of second degree sexual assault
17 and have the purpose to assist the commission of
18 that crime.

19 Before you may find the defendant
20 guilty, the State must prove by evidence which
21 satisfies you beyond a reasonable doubt that the
22 defendant directly committed the crime of second
23 degree sexual assault or intentionally aided and
24 abetted the commission of that crime.

25 All 12 jurors do not have to agree

1 whether the defendant directly committed the
2 crime or aided and abetted the commission of the
3 crime. However, each juror must be convinced
4 beyond a reasonable doubt that the defendant was
5 concerned in the commission of the crime in one
6 of those ways.

7 Second degree sexual assault. Sexual
8 intercourse without consent by use of threat or
9 violence.

10 Second degree sexual assault, as defined
11 in Section 940.225(2)(a) of the Criminal Code of
12 Wisconsin, is committed by one who has sexual
13 intercourse with another person without consent
14 and by use or threat of force or violence.

15 Before you may find that the defendant
16 is guilty of this offense, the State must prove
17 by evidence which satisfies you beyond a
18 reasonable doubt that the following three
19 elements were present:

20 Number one, the defendant, or a person
21 with whom he was acting as a party to the crime,
22 had sexual intercourse with Teresa Halbach.

23 Number two, Teresa Halbach did not
24 consent to the sexual intercourse.

25 Number three, the defendant, or a person

1 with whom he was acting as a party to the crime,
2 had sexual intercourse with Teresa Halbach by use
3 of threat -- by use or threat of force or
4 violence.

5 The use or threat of force or violence
6 may occur before or as part of the sexual
7 intercourse.

8 "Sexual intercourse" means any
9 intrusion, however slight, by any part of a
10 person's body or of any object, into the genital
11 or anal opening of another. Emission of semen is
12 not required.

13 "Did not consent" means that Teresa
14 Halbach did not freely agree to have sexual
15 intercourse with the defendant. In deciding
16 whether Teresa Halbach did not consent, you
17 should consider what Teresa Halbach said and did,
18 along with all the other facts and circumstances.
19 This element does not require that Teresa Halbach
20 offered physical resistance.

21 If you are satisfied beyond a reasonable
22 doubt that the defendant had sexual intercourse
23 with Teresa Halbach without consent and by use or
24 threat of force or violence, or are satisfied
25 beyond a reasonable doubt that the defendant

1 intentionally aided and abetted the commission of
2 the offense, you should find the defendant guilty
3 of second degree sexual assault.

4 If you are not so satisfied, you must
5 find the defendant not guilty.

6 Burden of proof and presumption of
7 innocence.

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

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

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

24 If you can reconcile the evidence upon
25 any reasonable hypothesis consistent with the

1 defendant's innocence, you should do so and
2 return a verdict of not guilty.

3 The term "reasonable doubt" means any
4 doubt based upon reason and common sense. It is
5 a doubt for which a reason can be given arising
6 from a fair and rational consideration of the
7 evidence or lack of evidence. It means such a
8 doubt as -- as would cause a person of ordinary
9 prudence to pause or hesitate when called upon to
10 act in the most important affairs of life.

11 A reasonable doubt is not a doubt which
12 is based upon mere guesswork or speculation. A
13 doubt which arises merely from sympathy or from
14 fear to return a verdict of guilt is not a
15 reasonable doubt. A reasonable doubt is not a
16 doubt such as may be used to escape the
17 responsibility of a decision.

18 While it is your duty to give the
19 defendant the benefit of every reasonable doubt,
20 you are not to search for doubt. You are to
21 search for the truth.

22 Information not evidence. An
23 Information is nothing more than a written formal
24 accusation against a defendant charging the
25 com -- uh, commission of one or more criminal

1 acts. You are not to consider it as evidence
2 against the defendant in any way. It does not
3 raise any inference of guilt.

4 Evidence defined.

5 Evidence is, first, the sworn testimony
6 of witnesses, both on direct and
7 cross-examination, regardless of who called the
8 witness.

9 Second, the exhibits the Court has
10 received, whether or not an exhibit goes to the
11 jury room.

12 Third, any facts to which the lawyers
13 have agreed or stipulated or which the Court is
14 directed -- or which the Court has directed you
15 to find.

16 Anything you may have seen or heard
17 outside the courtroom is not evidence. You are
18 to decide the case solely on the evidence offered
19 and received at trial.

20 The district attorney and the attorney
21 for the defendant have stipulated or agreed as
22 follows:

23 Steven Schmitz is a citizen living in
24 New Holstein, Wisconsin, a community located 30
25 miles west of Manitowoc, Wisconsin.

1 JoEllen Zipperer is a citizen living in
2 rural Manitowoc County, Wisconsin.

3 That if called to testify, Steven
4 Schmitz would testify that on October 31, 2005,
5 Teresa Halbach came to the Schmitz property to
6 take a photo of a vehicle for *Auto Trader*
7 *Magazine*. Schmitz would indicate that Halbach
8 was at his residence at approximately 1:30 p.m.,
9 was there for approximately ten minutes, was
10 wearing a white shirt, wait -- waist-length
11 jacket, and blue jeans. Schmitz would state that
12 before leaving, Halbach provided Schmitz with the
13 latest *Auto Trader Magazine* and a bill of sale,
14 left his property, and drove away in her SUV.

15 Number three, that if called to testify,
16 JoEllen Zipperer would testify that on October
17 31, 2005, Teresa Halbach came to the Zipperer
18 property to take a photo of a vehicle for *Auto*
19 *Trader Magazine*. Zipperer would indicate that
20 Halbach was at her residence between
21 approximately 2:00 to 2:30 p.m., was at there --
22 was there for approximately ten minutes, was
23 wearing a white top, waist-length jacket, and
24 blue jeans. Zipperer would state that before
25 leaving, Halbach provided her with the latest

1 *Auto Trader Magazine* and a bill of sale, left her
2 property, and drove away in her SUV. Zipperer
3 would finally state that the Avery Salvage Yard
4 is no more than a ten-minute drive from her
5 residence in Manitowoc County.

6 On October 31, 2005, Bobby Dassey was
7 the son of Barb Janda and brother of the
8 defendant, Brendan Dassey. Bobby Dassey lived in
9 the same residence with Barb Janda and Brendan
10 Dassey at the time.

11 That if called to testify, Bobby Dassey
12 would state that between 2:30 and 2:45 p.m. on
13 October 31, 2005, he was inside the Janda/Dassey
14 residence, where he observed a blue, slash, green
15 Toyota Rav 4 stop outside the residence, in close
16 proximity to a maroon van that his mother, Barb
17 Janda, had for sale.

18 Bobby Dassey would state that he
19 observed a young woman, that he later came to
20 identify as Tressa Halbach, exit her vehicle,
21 take some photos of the maroon van and walk
22 toward the trailer of Steven Avery.

23 Bobby Dassey would further state that
24 after taking a shower, he left the residence at
25 approximately 3:00 p.m. to go deer hunting, at

1 which time he still observed the Rav 4 parked
2 outside his residence, but that Teresa Halbach
3 was not observed.

4 Bobby Dassey would state that he
5 returned to the residence at approximately
6 5:00 p.m. and no longer observed the Rav 4.

7 On October 31, 2005, Scott Tadych was
8 the boyfriend of Barba Janda, knew the defendant,
9 Brendan Dassey, Steven Avery, and other family
10 members living at the Avery Salvage Yard.

11 That if called to testify, Scott Tadych
12 would state that between 7:30 and 7:45 p.m. on
13 October 31, 2005, he was at the Janda, slash,
14 Dassey property, where he dropped off Barb Janda.

15 Tadych would state that he observed a
16 large fire in the burn area behind the detached
17 garage of Steven Avery.

18 Tadych would further indicate that at
19 the time, he observed Brendan Dassey and Seven
20 Avery standing next to the fire.

21 Number eight, Dr. Jeffrey Jentzen is the
22 Chief Medical Examiner for Milwaukee County,
23 Wisconsin, and is a Board Certified Forensic
24 Pathologist. Dr. Jentzen agreed to be a medical
25 consultant in this case and offered expert

1 testimony as to the manner and cause of death of
2 Teresa Halbach.

3 That if called to testify, Dr. Jentzen
4 would state that after consultation with Forensic
5 Anthropologist, Dr. Leslie Eisenberg, he reviewed
6 reports, photographs, x-rays, bone fragments, and
7 other materials surrounding the Teresa Halbach
8 death investigation.

9 Dr. Jentzen would testify that, in his
10 expert opinion, to a reasonable degree of medical
11 certainty, the manner of death of Teresa Halbach
12 was homicide, and the cause of death was gunshot
13 wounds to the head.

14 On October 31, 2005, Angela Schuster was
15 the manager for *Auto Trader Magazine*, with
16 headquarters in Milwaukee, Wisconsin. On the
17 same date, Dawn Pliszka, performed duties as
18 receptionist for *Auto Trader*.

19 That if called to testify, Angela
20 Schuster would testify that Teresa Halbach was
21 hired as a photographer for *Auto Trader* in
22 October, 2004, and continued in that employment
23 through October 31, 2005. Schuster -- Schuster
24 would further state that Teresa Halbach had
25 performed photo shoots at the Avery salvage

1 business on five occasions pri -- prior to
2 October 31 in 2005; including, June 20,
3 August 22, August 29, September 19, and October
4 10.

5 That if called to testify, Dawn Pliszka
6 would testify that on October 31, 2005, she
7 received a phone call from Steven Avery at
8 approximately 8:12 a.m., at which time Avery
9 requested that, quote, the same girl that had
10 been out here before, end quote, come to his
11 property to take photos of a van he had for sale.
12 Pliszka would further state that Avery made the
13 appointment under the name, quote, B. Janda, end
14 quote, and that Pliszka left a voice mail for
15 Teresa Halbach at 9:46 a.m., asking if she could
16 make the appointment.

17 Number 13, that if called to testify,
18 Dawn Pliszka would further testify that at
19 2:27 p.m., she did speak with Teresa Halbach on
20 Teresa's cell phone, at which time Ms. Halbach
21 indicated that she was, quote, on her way, end
22 quote, to the Avery property from her previous
23 appointment.

24 You will consider that testimony in the
25 same manner as if it had been given under oath

1 here in court.

2 Circumstantial evidence. It is not
3 necessary that every fact be proved directly by a
4 witness or an exhibit. A fact may be proved
5 indirectly by circumstantial evidence.

6 "Circumstantial evidence" is evidence from which
7 a jury may logically find other facts according
8 to common knowledge and experience.

9 Circumstantial evidence is not
10 necessarily better or worse than direct evidence.
11 Either type of evidence can prove a fact.
12 Whether evidence is direct or circumstantial, it
13 must satisfy you beyond a reasonable doubt that
14 the defendant committed the offense before you
15 may find the defendant guilty.

16 Confessions. Admissions. The State has
17 introduced evidence of statements which it claims
18 were made by the defendant, is for you to
19 determine how much weight, if any, to give to
20 each statement. In evaluating each statement,
21 you must determine three things:

22 Whether the statement was actually made
23 by the defendant. Only -- only so much of a
24 statement as was actually made by a person may be
25 considered as evidence.

1 Whether the statement was accurately
2 restated here at trial.

3 Whether the statement, or any part of
4 it, ought to be believed.

5 You should consider the facts and
6 circumstances surrounding the making of each
7 statement, along with all the other evidence, in
8 determining how much weight, if any, the
9 statement deserves.

10 Jurors knowledge. In weighing the
11 evidence, you may take into account matters of
12 your common knowledge and your observations and
13 experience in the affairs of life.

14 Remarks of counsel. Remarks of the
15 attorneys are not evidence. If the remarks
16 suggest certain facts not in evidence, disregard
17 the suggestion.

18 Closing arguments of counsel. Consider,
19 carefully, the closing arguments of the
20 attorneys, but their arguments and conclusions
21 and opinions are not evidence. Draw your own
22 conclusions from the evidence and decide upon
23 your verdict according to the evidence under the
24 instructions given to you by the Court.

25 Exhibits. An exhibit becomes evidence

1 only when received by the Court. An exhibit
2 marked for identification and not received is not
3 evidence. An exhibited -- an exhibit received is
4 evidence, whether or not it goes to the jury
5 room.

6 Objections of counsel. Evidence
7 received over objections.

8 Attorneys for each side have the right
9 and the duty to object to what they consider are
10 improper questions asked of witnesses and to the
11 admission of other evidence which they believe is
12 not properly admissible. You should not draw any
13 conclusions from the fact an objection was made.

14 By allowing testimony or other evidence
15 to be received over the objection of counsel, the
16 Court is not indicating any opinion about the
17 evidence. You, jurors, are the judges of the
18 credibility of the witnesses and the weight of
19 the evidence.

20 Improper questions. Disregard,
21 entirely, any question that the Court did not
22 allow to be answered. Do not guess at what the
23 witness' answer might have been. If the
24 evidence, it -- itself, suggested that certain
25 information may be true, ignore the suggestion

1 and do not consider it as evidence.

2 Stricken testimony. During the trial,
3 the Court has ordered certain testimony to be
4 stricken. Disregard all stricken testimony.

5 Weight of evidence. The weight of
6 evidence does not depend on the number of
7 witnesses on each side. You may find that the
8 testimony of one witness is entitled to greater
9 evidence than that of another witness or even of
10 several other witnesses.

11 Expert opinion testimony. Ordinarily, a
12 witness may testify only about facts. However, a
13 witness with expertise in a particular field may
14 give an opinion in that field. You should
15 consider the qualifications and credibility of
16 the expert, the facts upon which the opinion is
17 based, and the reasons given for the opinion.

18 Opinion evidence was received to help
19 you reach a conclusion. However, you are not
20 bound by any expert's opinion.

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

1 Credibility of witnesses. It is the
2 duty of the jury to scrutinize and to weigh the
3 testimony of witnesses and to determine the
4 effect of the evidence as a whole. You are the
5 sole judges of the credibility. That is, the
6 believability of the witnesses and the weight to
7 be given to their testimony.

8 In determining the credibility of each
9 witness and the weight you give to the testimony
10 of each witness, consider these factors:

11 Whether the witness has an interest or
12 lack of interest in the result of this trial.

13 The witness' conduct, appearance, and
14 demeanor on the witness stand.

15 The clearness or lack of clearness of
16 the witness' recollections.

17 The opportunity the witness had for
18 observing and for knowing the matters the witness
19 testified about.

20 The reasonableness of the witness'
21 testimony.

22 The apparent intelligence of the
23 witness.

24 Bias or prejudice, if any has been
25 shown.

1 Possible motives for falsifying
2 testimony.

3 And all other facts and circumstances
4 during the trial which tend either to support or
5 to discredit the testimony.

6 Then give to the testimony of each
7 witness the weight you believe it should receive.

8 The defendant has testified in this
9 case, and you should not discredit the testimony
10 just because the defendant is charged with a
11 crime. Use the same factors to determine the
12 credibility and the weight of the defendant's
13 testimony that you use to evaluate the testimony
14 of any other witness.

15 There is no magic way for you to
16 evaluate the testimony. Instead, you should use
17 your common sense and experience. In everyday
18 life, you determine for yourselves the
19 reliability of things people say to you. You
20 should do the same here.

21 Ladies and gentlemen, at this time that
22 concludes the instructions I'm going to give.
23 Later on, I will give a few more. Now is the
24 time for closing argument. Counsel?

25 ATTORNEY FALLON: May it please the

1 Court, Counsel. In our opening remarks to you,
2 we asked you to think about two questions as you
3 listen to the evidence, as you examine the
4 evidence, as you evaluated the evidence. And
5 those questions were:

6 Was he there? Did he help?

7 In thinking about answering those
8 questions, there's been a great deal of
9 testimony, a great deal of information provided
10 about the defendant, Brendan Dassey, and his
11 uncle, Steven Avery. But there's one other
12 person here who's important. And that is this
13 woman, Teresa Halbach, because this case is about
14 her as well.

15 In thinking about these questions, we
16 pose them this way because there's an old maxim
17 that seems to really fit; he who helps the guilty
18 shares the crime.

19 We're going to evaluate the evidence
20 from another prospectus. From what happened, the
21 big picture, in the words of the defendant, and
22 in the evidence that we presented.

23 Then we'll look at what corroborates
24 that. Why is it believable, why is it reliable,
25 what the defendant told us?

1 And then we'll talk about the party to
2 the crime. Specifically, why he is guilty of
3 these offenses. What is it that he did that made
4 him a -- a party to the crime.

5 And, finally, we'll look at the
6 evidence. We'll turn that prism, and we'll look
7 ever so slightly at the same evidence from
8 another perspective. And that's the choices that
9 he made. Comparing what he did and what he
10 didn't do. The choices that he made, the
11 decisions that could have been made, that should
12 have been made, but were not made. And those
13 decisions, along with what he -- what he didn't
14 do, along with what he did do, is the proof.

15 All right. What happened? October 31.
16 Just like any other Monday, Teresa Halbach gets
17 up, seems like any other day, any other workday
18 for her. Little did she know that this would be
19 her last.

20 You see, this day she was on the *Auto*
21 *Trader* beat. She had a full day of appointments.
22 An afternoon full of appointments. As you
23 recall, the first appointment was with Mr. Steven
24 Schmitz of New Holstein. Mr. Schmitz, had he
25 been called to testify, would have told you that

1 Teresa Halbach was at his residence about 1:30.
2 A ten-minute business transaction to place his
3 vehicle in the *Auto Trader Magazine*. And Teresa
4 appeared with a waist-length jacket, a white
5 shirt and blue jeans.

6 Upon the conclusion of their business,
7 he provided her an *Auto Trader Magazine* and a
8 bill of sale. And Teresa moved on to her next
9 appointment.

10 And that was with the Zipperers. You
11 recall that if JoEllen Ziplier -- Zipperer had
12 been called, she would have told you that Teresa
13 Halbach was at her residence in rural Manitowoc
14 County between 2 and 2:30. About that time.
15 Again, about a ten-minute transaction. Teresa
16 was wearing a waist-length jacket, a white top
17 and blue jeans.

18 And, again, the transaction was brief
19 and concluded with a copy of the *Auto Trader*
20 *Magazine* and a bill of sale. And, as
21 Ms. Zipperer would have told us, it's about a
22 ten-minute ride to her next appointment. That
23 appointment was with a B. Janda, which, we all
24 know now, was the appointment with Steven Avery.
25 The appointment with death. Little did she know

1 what awaited her.

2 Let's look at the evidence more closely.
3 Remember, about 2:27 now, Teresa calls into *Auto*
4 *Trader* to Dawn Pliszka. Says, I'm on my way to
5 my next appointment. It's a ten-minute ride.
6 Thereabouts.

7 So somewhere between 10:35 and 10:40,
8 Teresa Halbach arrives. And at 2:41 in the
9 afternoon on October 31, Teresa makes her last
10 call. You recall Exhibit 56, the Cingular
11 records documenting her very last call at 2:41.

12 As you recall from the other stipulation
13 reached, at about 2:45 p.m. Bobby Dassey's
14 getting up. Getting ready to start his day. He
15 looks out the window, and what does he see?

16 Called to testify, he would have told
17 you he observed a blue/green Toyota Rav 4 stop
18 outside of his residence in close proximity to
19 the maroon van that his mother, Barb Janda, had
20 for sale. He would tell you that he saw a woman,
21 that he later learned was Teresa Halbach, exit
22 her vehicle and take pictures of that van.

23 Now, remember, this is 2:45. She
24 concludes with the pictures and where does she
25 go? Bobby Dassey tells us that she was walking

1 toward the residence of Steven Avery. He takes
2 his shower, he gets up and he hits the road at
3 3:00. He likes to go hunting before he goes to
4 work. He leaves at 3:00 and what does he see?
5 He doesn't see Teresa, but her vehicle is still
6 there. The Rav 4.

7 But when he comes back at five, Teresa
8 is nowhere to be seen, and neither is the Rav 4.
9 And we now know, based on the words of the
10 defendant, himself, that Bobby Dassey was not the
11 last Dassey to see Teresa Halbach alive.

12 An hour passes. An agonizingly slow
13 hour for Teresa Halbach, no doubt. You see,
14 she's been overcome. She's now handcuffed,
15 leg-cuffed and spread eagle on the bed of Steven
16 Avery so that he can have his way with her.

17 Enter the defendant, Brendan Dassey.
18 You will recall there's no disputing that he got
19 off the bus at 3:45, again, about an hour after
20 her arrival on the property, with his brother,
21 Blaine, and they head up the driveway to the
22 house. And, as you might expect, as usually
23 happens in families, the older brother gets his
24 way and Blaine gets the computer and the phone
25 first to arrange his night's plans. And the

1 defendant watches TV for awhile and then he goes
2 out to get the mail.

3 He goes down and he gets the mail. And
4 he's coming back to his house, and he looks at it
5 and says, oh, I got something here for Uncle
6 Steve. Well, I'll just take it over there. So
7 he goes over to Steve Avery's trailer, and as
8 he's knocking on the door, he hears screams.
9 Screams for help. And he's knocking. And as he
10 told us in his statement, it takes five minutes
11 for his Uncle Steve to answer the door. And when
12 he does, what is his observation? Steven Avery
13 is dressed in red shorts, a white t-shirt and
14 sweating.

15 Come on in, Brendan. So he goes in.
16 And in a matter of moments he begins to
17 understand what's occurring, what horrors are
18 occurring in that room, because he can look down
19 that hallway and see Teresa Halbach's body on
20 that bed, at which time his uncle extends a most
21 gruesome invitation. Do you want some, he says.
22 They talk.

23 The defendant is trying to decide, well,
24 I -- I don't know. I -- I'm too young. I --
25 I'm -- I'm not ready for this. Do you want some?

1 This is between 4 and 4:30. But it's starting to
2 get late now. The defendant knows he's got to
3 get home, because his mother's going to be home
4 at five and Blaine is home. Got to find out
5 what's going on.

6 So he goes home and he has dinner with
7 his brother. He talks to his brother. And his
8 mother comes home and he talks to his mother.
9 And he learns that she's going to Green Bay to
10 see the mother of Mr. Tadych. He knows that his
11 brother, Blaine, is going treat or treating.

12 So what does the defendant decide to do?
13 He decides to return to Teres -- to Steven Avery.
14 He decides to take him up on the invitation. But
15 before he does, he gets a call. He gets a call
16 from Mike Kornely. I think Mr. Kornely was off
17 maybe a half an hour. He gave us an hour in
18 which that call would made. He thinks six. I
19 think that call came in closer to 5:30. The call
20 probably came in at 5:30, and Brendan clearly did
21 talk to Mike Kornely, we have no dispute about
22 that.

23 But he leaves and goes back. We know he
24 goes back. We know he goes back because he tells
25 the police he goes back. We know he goes back

1 because he tells his mother in those phone
2 conversations, ten weeks later on May 13 and May
3 15, that he went back. That he was there.

4 And we also know through one other fact,
5 he knows that Avery's fiancé, Jodi Stachowski,
6 calls, and she told us that she called the first
7 time about 5:30. So we know he went back.

8 Meanwhile, back at the Avery trailer,
9 Teresa remains a prisoner and we can only
10 imagine. But the defendant, this man, he goes
11 back. Why? Because he wanted sex. Because he
12 wanted to know what it was like. Because he
13 decided, he made his first choice, to accept the
14 invitation.

15 So he goes back and he rapes Teresa
16 Halbach while his uncle watches and applauds his
17 effort. Ata boy, Brendan, that's the way to do
18 it. Does that sound like something you'd make
19 up? So they go back to the front room and they
20 talk about their deeds. But more importantly,
21 they talk about, what are we going to do next?
22 Well, the answer is obvious. They decide to kill
23 her.

24 They go back to the bedroom. Steven
25 Avery stabs her in the stomach. He hands the

1 knife to the defendant. Says, here, cut her.
2 And the defendant, he tells us he does. Right
3 across here. Tells us that Mr. Avery chokes her
4 to the point of unconsciousness.

5 The defendant is then told to cut off a
6 lock of her hair. A souvenir, no doubt. She's
7 unconscious. They uncuff her. They tie her up
8 and they carry her unconscious body to the
9 garage. And then Steven Avery gets another
10 monstrous idea. I know, instead of burying her
11 in a nearby pond, we'll burn her. But, first,
12 but, first, Brendan, you wait here. I got to go
13 back and get the gun.

14 And at that moment, the defendant
15 becomes the silent sentinel for the last moments
16 of Teresa Halbach's life. Steven Avery returns
17 to that garage and shoots her 10 or 11 times on
18 the floor of that garage. And in the blink of an
19 eye the killers become pallbearers carrying her
20 out on the Black Jack creeper to the fire that's
21 already started, to the fire that's ready to go
22 under cover of darkness, to a bonfire that's
23 common on that property. Carrying her to the
24 funeral fire.

25 Only this is not a funeral fire of days

1 of antiquity where family and friends came to
2 honor the dead for their life. This was not
3 that. This was an incineration. It was not
4 conducted to honor her, it was conducted to
5 destroy her. It was conducted, more importantly,
6 to destroy the evidence of these heinous acts.

7 Moments pass, and it's time to clean up.
8 It's time to cover up. The SUV is taken down to
9 the other part of the salvage yard. It's covered
10 with tire -- uh, excuse me, with brush, fence
11 posts, with brush, and the hood of a car. All
12 part of the plan to cover up these acts.

13 Then it's back to the fire. What are we
14 going to do? Now, it's time for the fire to be
15 tended. More tires, more wood, more brush, a van
16 seat are all thrown onto the fire to conceal the
17 horrific acts that they have done.

18 Now, let's step back for a moment. It's
19 about 7, 7:30 -- 7:30 to 7:45 now. The
20 defendant's mother is returning with Scott Tadych
21 from Green Bay. And you recall the stipulation.
22 If called to the -- testify, Mr. Tadych would
23 state that between 7:30 and 7:45 on October 31,
24 he was at the property where he dropped off Barb
25 Janda.

1 Tadych would state he observed a large
2 fire in the burn area behind the detached garage
3 of Steven Avery. Tadych would further indicate
4 at that time he observed Steven Avery and the
5 defendant standing by the fire.

6 Time passes. But there's more cleaning
7 up to be done. There's more coverup to be done.
8 The floor in the garage where the shooting
9 occurred has to be cleaned with paint thinner,
10 with gasoline, and with bleach. Bleach. Why
11 would you use bleach to clean automotive stains
12 off a floor in a garage? You wouldn't. But, if
13 you're Steven Avery, you would know to use bleach
14 to destroy the evidence.

15 What else is destroyed? Her clothes.
16 There wasn't just a bag of rags that was used to
17 clean up. Teresa Halbach's clothes were used to
18 clean that up. And they were thrown in the fire
19 along with the bedding. And just as Teresa and
20 her clothes was burned, just as her personal
21 effects were earlier disposed of in the burn
22 barrel, the camera, the cell phone and the like,
23 her purse, her palm pilot, all of that, burned.

24 Eventually, the killers have to go back
25 to the fire, because to consume a body requires a

1 great deal of heat. More tires, more fuel. And
2 they go back and they tend the fire. And they
3 watch the fire. And they must have thought they
4 were home free. But we know they were not,
5 because Teresa's remains bear silent witness to
6 the killer's deeds. Tom Sturdivant, Rod Pevytoe,
7 Leslie Eisenberg and Dr. Jeffrey Jentzen would
8 see to that.

9 And you recall Dr. Jentzen's
10 stipulation. He would have told us, in his
11 expert opinion to a reasonable degree of medical
12 certainty, that the manner of death was homicide
13 and the cause of death was gunshot.

14 All right. Now, the question is, why
15 should we believe the things that the defendant
16 has told us? Let's talk about corroboration.
17 Teresa Halbach was in Steven Avery's trailer on
18 October 31. How do we know? His trailer was
19 searched. And what did we find? An *Auto Trader*
20 *Magazine* and a bill of sale. Just the same
21 information that Steven Schmitz received, that
22 JoEllen Zipperer received.

23 Teresa Halbach was restrained in Steven
24 Avery's trailer. How do we know? Handcuffs.
25 Handcuffs and leg cuffs. Restraints.

1 Teresa Halbach was shot in the garage.
2 How do we know? Well, remember, there was a
3 search warrant that was issued shortly after the
4 defendant gave his statement. His confession.
5 We have bullet fragments from a .22 caliber. We
6 have shell casings, 11 shell casings. Shell
7 casings that were discharged from this weapon.
8 Bullets discharged from this weapon. A
9 .22 caliber Marlin Glenfield rifle. The very
10 rifle that hung on the rack in Steven Avery's
11 bedroom. The very rifle that fired the bullet
12 which was found right there, in bullet number 23,
13 found in the garage. The bullet with the profile
14 of Teresa Halbach. Her DNA is on that bullet.

15 Now, let's think about that for a
16 minute. That rifle was effectively seized by 11
17 a.m. on Saturday, November 5, when the SUV was
18 discovered on that property, because law
19 enforcement had control of those premises. It
20 was collected into evidence the next day, Sunday,
21 the 6th, as the testimony revealed.

22 Now, that gun is the only gun that could
23 have fired the bullet with Teresa Halbach's DNA
24 on it. All right. Well, we know Teresa Halbach
25 was alive on Monday morning. We know she was

1 alive on Monday afternoon. So that bullet with
2 her DNA had to have been fired from that gun
3 between Monday afternoon, October 31, and
4 Saturday, the 5th, because how else does that
5 bullet get in that garage with her DNA on it?

6 The bullet gets there because it comes
7 from the gun of Steven Avery, from the shots
8 fired by Steven Avery, that only this man, the
9 defendant, knows. He told us she was shot ten
10 times. That's pretty close. As we say, we have
11 11 cartridges. She was shot with a .22 caliber
12 rifle. We have a .22 caliber rifle.

13 And what else did we find in the search?
14 More ammunition, .22 caliber long rifle magazine,
15 mini mags found in the trailer of Stre --
16 Steven -- Steven Avery.

17 Teresa Halbach was shot in the head
18 twice. She was shot on the left side of the
19 head. How do we know that? Well, we have two
20 bits of information. Dr. Leslie Eisenberg, the
21 forensic anthropologist, told you that she
22 examined the cranial fragments and found, not
23 one, but two fragments that showed internal
24 beveling consistent with a projectile, consistent
25 with bullet entry wounds to the left side of the

1 head. Remember? The parietal bone. And into
2 the back of the head, the occipital bone.
3 There's an example of the cranial damage to the
4 parietal bone right there. A bullet entrance
5 wound.

6 X-rays. Remember the testimony of
7 Mr. Olson? There's an x-ray from the parietal.
8 That's the inside picture. Traces of elemental
9 lead. Well, lead comes from bullets. There's
10 the parietal and the occipital. Left side of the
11 head and the back side.

12 Teresa Halbach's body was loaded into
13 the rear of an SUV after she was shot. How do we
14 know that? The defendant told us they did that.
15 Well, we have Sherry Culhane and Nick Stahlke to
16 tell us about that.

17 This particular photograph here shows
18 the presence of a stain on the right rear well
19 plastic molding. A stain that Mr. Stahlke told
20 us was consistent with hair. With bloody hair.

21 But that's not the only blood in the
22 back. We have the cargo door, the tailgate area
23 where you have impact stains, you have dropping
24 passive gravity stains. All blood stains. All
25 blood belonging to Teresa Halbach. Clearly,

1 corroborating the fact, as the defendant told us,
2 that her body was placed in and out of that
3 vehicle.

4 He told us that her body was burned. It
5 was mutilated in the fire pit behind Avery's
6 garage. How do we know? Well, let's look at the
7 site of the general layout. We have the
8 defendant's trailer, the van, Mr. Avery's trailer
9 and the burn area all in immediate close
10 proximity. And you remember the defendant told
11 us it only takes a minute to walk between his
12 place and Steven Avery's. The burn area contains
13 human remains. Remember, the silent witness.

14 Tom Sturdivant and Rod Pevytoe. Mr.
15 Sturdivant, the one who began to find the remains
16 of Teresa Halbach. The remains which were
17 provided to Dr. Eisenberg from this burn pit just
18 as the defendant said.

19 As Dr. Eisenberg told us, this was the
20 first bit of forensic evidence from that fire
21 pit. Now, all you have to do is look at that
22 box. Those are the remains of Teresa Halbach.
23 If that's not mutilation, if that's not burning
24 to the point of mutilation, to the point of
25 destroying, as best they could, her remains, I

1 don't know what is.

2 Remember Mr. Pevytoe telling us,
3 Dr. Eisenberg and Sherry Culhane, this piece of
4 bone recovered from the pit had the muscle tissue
5 of Teresa Halbach. This was tested and the DNA
6 confirms a match to Teresa Halbach. There's no
7 doubt that it is her remains in the pit just as
8 the defendant told you.

9 But as if that's not enough, do we have
10 any more? Dr. Eisenberg told us that there were
11 representative samples from almost every bone in
12 the skeleton of Teresa Halbach that was found in
13 that burn pit. You remember this photograph?
14 She was assisted by Trooper Austin from the
15 Wisconsin State Patrol, who put together this
16 diagram reflecting the -- the bone fragments
17 which were recovered from head to toe. There's
18 no doubt that she was burned in that pit, that
19 she was mutilated in that pit.

20 And if we needed more, we have more.
21 Dr. Simley. Tooth No. 31. The molar. He
22 fracture matched it together, compared it with
23 the dental x-rays he received from Teresa's
24 dentist, and was telling you that it was very
25 consistent, highly consistent with Teresa

1 Halbach.

2 So, you have DNA, you have the defendant
3 telling us, you have a dentist confirming all
4 what the defendant told us, it is her remains in
5 that burn pit. He told you that a van seat and
6 tires were thrown upon the fire. Is there any
7 doubt of that? There is no doubt.

8 Remember the testimony -- excuse me --
9 of Special Agent Pevytoe, with 27 years
10 experience in the Arson Bureau for the Wisconsin
11 Department of Justice, examining more closely the
12 pit and its remains. And what did he tell us?
13 He told us many things. Steel-belted wire from
14 radial tires was harvested from that pit. And
15 when he observed that wire, there were bone
16 fragments in that wire. So we know the tires
17 were used to consume Teresa Halbach. We also
18 know tires were used, but he could tell you that
19 encrusted-like surface of the ground from the
20 tires being consumed and melting down, from the
21 smell, he could confirm there were tires.

22 He also commented on this, Exhibit 170.
23 The implements of mutilation. You can still see
24 wire from steel-belted radial tire. There's the
25 picture from the scene as it was. You can see a

1 tire in the background and the van seat.

2 And, as Agent Pevytoe told us, this ball
3 of wire right here is steel-belted radial tires,
4 and in that spool of wire were more remains, when
5 he first saw them, of Teresa Halbach. He said
6 there were many tires, multiple tires, at least
7 five, probably more. Who knows how many radial
8 tires that weren't steel-belted were used in the
9 incineration of Teresa Halbach? He told us that
10 fires -- fired excellent source of fuel.

11 But he also told you about the van seat.
12 This van seat. A van seat, for all intents and
13 purposes, is going to take two people to pick up
14 and put on the fire. Agent Pevytoe told you that
15 the polyurethane in that seating is like solid
16 gasoline. It's a fuel that's roughly the
17 equivalent of the fuel in the tires, that you're
18 going to get quite a blaze from a tire. You can
19 have just a couple of tires and have a flame
20 that's going to go back and forth, three, four,
21 five feet. Couple more tires in, you might have
22 one that's going to go nine or ten feet with a
23 great deal of heat. Enough heat to consume a
24 body.

25 The defendant told us that Teresa

1 Halbach's SUV, her Rav 4, was driven to the pit
2 area, as they call it. To the salvage yard. To
3 a point in the yard as far away from Avery's
4 trailer, far away from the defendant's trailer,
5 in the far corner.

6 The defendant told you in his confession
7 that the vehicle was covered with branches and a
8 car hood as we talked about earlier. Well, we
9 have the picture upon recovery that night.
10 There's the car hood, the fence post and the
11 other items. Earlier in the day, upon its
12 initial discovery, another view. Branches on
13 top, boxes, cardboard, and there's the hood, just
14 as the defendant told us. The license plates
15 were removed. You recall the testimony and
16 stipulation. They were found by a firefighter in
17 an abandoned car on that property.

18 But here's a key point. In that
19 statement the defendant tells us that Steven
20 Avery opened the hood of that vehicle. How do we
21 know? Well, based on that statement on March 1,
22 they swabbed the hood and obtained a DNA profile
23 on that hood. A DNA profile of Steven Avery.
24 Only the killer and his accomplice would know
25 that, to look there, because law enforcement had

1 not looked there before. And not until he told
2 them to, is when they found this.

3 The garage floor was cleaned with
4 gasoline, paint thinner, and bleach. Remember
5 the testimony -- excuse me -- of John Ertl.
6 Mr. Ertl told us that one of his duties for the
7 crime lab is to come in and check areas for
8 possible blood stain residue. And one of the
9 tools they use is a -- is a spray called luminol,
10 because it reacts to a -- a number of items. But
11 most importantly it reacts to blood.

12 But when asked, what else does it react
13 to? He said, bleach. It reacts "vigorously", I
14 believe was his word, to bleach, just as it does
15 to blood. And although subsequent testing found
16 no blood, the luminol reacted to bleach. Bleach
17 used to clean the stain in the garage. Paint
18 thinner, bleach. Recovered items.

19 But here's a critical fact. The
20 defendant's blue jeans. Exhibit 58. Those
21 certainly look like bleach stains to me. The
22 defendant told the officers on March 1, before he
23 gave his statement, that these were the pants he
24 was wearing when they asked him, hey, we heard
25 from somebody else that you had bleach on your

1 pants. He said, yeah, there is the bleach.

2 There are the pants.

3 Now, it seems to me the last time that I
4 spilled bleach on any of my clothes, unless I
5 knew it, unless I saw it, you don't really
6 recognize that there's bleach on there until
7 they're washed. The defendant is trying to sell
8 you a bill of goods saying, well, I -- I didn't
9 bend over, I didn't get dirty, but I decided to
10 wash my pants even though I just put them on an
11 hour or two earlier. I don't think so.

12 The defendant told you that the key for
13 Teresa's vehicle was put, by Mr. Avery, in his
14 bedroom. The key was discovered in a search in
15 the defendant's bedroom. Now, that search
16 occurred on November 8.

17 Teresa Halbach's clothes. He told us
18 they were burned in the pit, but why should we
19 believe him? Well, we have the five Daisy
20 Fuentes rivets recovered in the burn area. We
21 know that Teresa had a pair of Daisy Fuentes
22 jeans from her sister, Katie. Exhibit 13. A
23 pair very much like these. A pair with six
24 rivets. Rivets that look just like that.

25 You remember Agent Sturdivant telling

1 you about a zipper pull, also, that he found when
2 he first began searching that burn area on
3 November 8. So we have a zipper pull, we have
4 Daisy Fuentes rivets, and I think he also told
5 you some grommets that are, no doubt, from her
6 shoes.

7 The defendant told you that his uncle's
8 finger had a cut on it at the time the SUV was
9 hidden in the corner of the salvage yard. All
10 right. There's multiple points that corroborate
11 this. A search of the defendant, Steven Avery.
12 You recall this picture with a cut on his hand.
13 Interestingly enough, the right hand. The hand
14 that you would put a key, if you were going to
15 start a car with your right hand, you'd put it in
16 that ignition. And where is the stain? Right
17 next to the ignition. Right here. Ignition is
18 right there behind the steering wheel, and
19 there's the stain. So if you were actively
20 bleeding, that's what you would expect to see.
21 Blood right where you would expect to see it.

22 But there was blood elsewhere.
23 Remember? Steven Avery's blood was on the CD
24 case and on the car seats, corroborating the fact
25 that he was actively bleeding, that he did have a

1 cut on the day that that vehicle was hidden.

2 We have burn barrel contents. Defendant
3 said he saw items in the burn barrel. Well, we
4 know that he was right, because recovered from
5 the burn barrel were various electronic devices,
6 or at least their remains. A canon A310
7 PowerShot camera, a Motorola RAZR phone, a palm
8 pilot, all recovered from the barrel. Things
9 that only the killers would know.

10 We have a couple more. We have more
11 corroboration. Jodi Stachowski testified that
12 she called Steven Avery twice on October 31. The
13 defendant told us that she called twice on the
14 31st.

15 Before we get to that, we have even two
16 more points. And it's almost like it's like
17 the -- the elephant in the room that no one's
18 paying attention to for corroboration. There are
19 two points. The richness of the detail provided
20 by the defendant in that confession tells us that
21 it's true. You can't have that rich of a detail
22 unless you were there, unless you experienced it,
23 unless you lived through it.

24 And the other one is the fact that
25 everything he said, everything he said in that

1 story, corroborates Steven Avery's involvement in
2 this. There was nothing inconsistent that
3 suggested anyone else other than Steven Avery was
4 his partner in this heinous act.

5 All right. Party to a crime. What he
6 did. Let's talk about that.

7 First degree intentional homicide,
8 mutilation of a corpse, second degree sexual
9 assault. I want to talk a little bit about
10 "party to the crime" before we review,
11 specifically, how the evidence applies to the
12 defendant. One is a party to the crime if they
13 directly commit it or they intentionally aid and
14 abet the person who's committing the crime.

15 The Court has just instructed you, and
16 let me emphasize, a person intentionally aids and
17 abets the commission of a crime when acting with
18 knowledge or belief that another person is
19 committing or intends to commit a crime. He
20 knowingly either assists the person, he helps the
21 person, or he is ready, willing to assist, and
22 the person who's doing the act knows of the
23 willingness to assist.

24 All right. So let's talk about that
25 knowledge component. Think back. He opens the

1 door, and he knocks, and he hears screaming. He
2 hears screaming for help. He goes in and he sees
3 her tied to the bed, cuffed, spread eagle. And
4 he hears the words again, help me. Clearly,
5 there's knowledge right there. He knows there's
6 a crime afoot. Whatever is happening, it isn't
7 good and he knows it.

8 But the critical fact is the invitation
9 by the defendant. The invitation to have sex
10 with Teresa Halbach. The invitation to rape her.
11 And he chooses. He decides to accept. So he
12 participates. He directly commits second degree
13 sexual assault because he rapes her. He assists.
14 He helps kill her. He rapes her. He cuts her
15 throat. Remember? The defendant stabs her in
16 stomach and he gives the knife to the defendant
17 and says, cut her. He cuts her.

18 He helps uncuff her. He holds her down
19 to make sure she doesn't try to get away, after
20 they've stabbed her and choked her, so that she
21 can be tied up. He helps to carry her to the
22 garage. He helps put her into the Rav 4 after
23 Avery shoots her. He watches her while he gets
24 the gun.

25 He helps carry her on the Black Jack

1 creeper to the fire pit. And he helps throw her
2 on the fire. He helps putting fuel on the fire;
3 tires and wood and brush and the van seat. All
4 affirmative acts. All things that he did. He
5 helped.

6 He gets the golf cart so that -- to make
7 it easier to collect a van seat, a wood cabinet,
8 and whatever else, and tires. Got to work fast
9 before everyone gets home. And he watches. He's
10 ready, willing and able to assist as Steven Avery
11 tends to the incineration of Teresa Halbach.
12 He's there. He knows what's going on. He saw
13 the body parts. You bet he did. And he told his
14 cousin that he did. We know that to be true.

15 Now, before we do that, let's talk a
16 little bit more about these jury instructions.
17 First degree intentional homicide. The
18 defendant, or a person with whom he was acting,
19 in this case, Steven Avery, caused the death of
20 Teresa Halbach. There is no doubt.

21 "Cause" means the defendant's act or
22 acts, or the person with whom he was acting, was
23 a substantial factor in producing her death.
24 Well, cutting her throat, tying her up and
25 carrying her to the garage so that Steven Avery

1 can shoot him -- shoot her is certainly a
2 substantial act in furtherance of her death. A
3 substantial factor in producing her death.

4 Clearly, they intended to kill her.
5 After they're done raping her, they have a little
6 chat in the front room to decide what we're going
7 to do next. That's the point they decide to kill
8 her. That's the point where he had the
9 knowledge. He knew that they were going to
10 commit a crime. He knew they were going to kill
11 her because they had to kill her, because she'd
12 been to the Avery Salvage Yard many times before.
13 She knew her killers. She certainly knew Steven
14 Avery. So to cover up the sexual assault, they
15 had to kill her, and they did. Those are the
16 acts.

17 Now, I'm going to comment on you've been
18 given what we call in the trade, "a lesser
19 included offense" called "first degree reckless
20 homicide". At clearly, at a minimum, his
21 behavior is reckless. It's clearly utter
22 disregard for human life. The callousness by
23 which he conducted himself. Turning a cold ear
24 to her pleas for help. Don't do it. Do the
25 right thing. Please. But he turned a deaf ear

1 and he didn't do the right thing. He wanted to
2 do what he wanted.

3 Well, that, at a minimum -- that is so
4 clearly beyond reckless. The evidence calls for
5 a verdict of guilty on first degree murder as a
6 party to the crime. He helped kill her. And
7 while it's true that we make no bones about it
8 that Steven Avery was the one who fired the gun,
9 he was clearly assisted by Brendan Dassey.

10 There is no question on mutilation of
11 the corpse. Why? You have to burn the body. We
12 got to get rid of the evidence. Fire is better
13 than discarding a body in some pond some near --
14 somewhere nearby. A fire will consume the
15 remains. There'll be nothing left. We'll get
16 away. Or so they thought.

17 Second degree sexual assault only
18 requires two elements. Did he have sexual
19 intercourse with her, and he did so without her
20 consent. Well, I think "without consent" is
21 pretty apparent here. And he told you. He
22 didn't have to tell you. That whole confession,
23 he could have laid it all on Steven Avery, but he
24 didn't. No one had to -- he didn't have to admit
25 that he raped her, but he did. We know he did

1 it.

2 All right. Now, let's look at the
3 evidence from another perspective. Let's look at
4 the evidence from the perspective of what he
5 didn't do, of the choices he made, because it's
6 important. While we are free to choose our
7 actions, we are not free to choose the
8 consequences of our actions. And this is about
9 consequences. This is about justice.

10 What's the first choice as we go back
11 and think about the evidence? What was the first
12 choice he really had to make here? Well,
13 remember, it's between 4 and 4:30, and he's over
14 there at Steven Avery's trailer, and he sees her
15 tied to the bed. He's asked, do you want some?
16 It's decision time.

17 Well, he could have tried to rescue her.
18 But I'll grant him that. He's not going to pull
19 that off. We all know that. But what were the
20 choices that he had? He could run, leave, call
21 9-1-1. He could just say, Uncle Steve, you can't
22 do this. He could have at least tried to talk
23 him out of it. He could have simply left and
24 said, no, to the invitation. And when he got
25 back at 5:00, he could have told his mother. As

1 we know in the call, and as she rightly noted, I
2 would have put you in the car and we would have
3 left.

4 The defendant was not someone who was in
5 the wrong place at the wrong time. He was in the
6 right place at the right time. He was the only
7 person who could have saved her, and he chose not
8 to save her. Why? Because he wanted to know
9 what it was like. That was the choice he made.

10 A second choice. Showing his
11 complicity. He didn't have to go back.
12 Remember, he's at home at 5:00. He hadn't done
13 anything yet but see what was likely to happen.
14 He hadn't done anything but receive an
15 invitation. At 5:00, he didn't have to go back.
16 He could have told Blaine. He could have told
17 his mother. He could have -- I got to go trick
18 or treating, Blaine, you got to take me. Or,
19 mom, can I go with you? But he didn't. He chose
20 to go back. That's the decision he made.

21 The third choice. Okay. He's still got
22 a chance to rape or not to rape Teresa Halbach.
23 Try to rescue her probably wouldn't have been too
24 successful. He could have ran out and called
25 9-1-1. He could have left. Or, you know what?

1 At least he could have said, no. But he didn't.
2 He chose to rape her. Even with her saying,
3 don't do it, do the right thing, tell him to
4 stop. But he didn't.

5 So think about the decisions that he had
6 to make along the way just in a matter of
7 moments. He's got to go into that room. He's
8 got to take his shirt off. Got to take his pants
9 off. He's going to take his shoes off. He's
10 going to take his underwear off. He's going to
11 climb into that bed and he's going to penetrate
12 her.

13 All steps along the way. Decisions.
14 Stop anywhere. Say, no, I don't want to do this,
15 Uncle Steve. But he didn't. He gets done and
16 they go into the other room, and he gets his --
17 Instead of making a call, instead of receiving
18 the thanks from the Halbachs, instead of
19 receiving that adulation from the -- from the
20 family for reporting this crime and saving their
21 daughter, instead of receiving thanks from them,
22 he's receiving thanks from Steven Avery. Ata
23 boy, that's how you do it. That's the choice.
24 He could have chosen thanks from the Halbachs,
25 but he chose thanks from his uncle.

1 Fourth choice. The decision to help
2 kill her. All right. He'd already found out
3 what he wanted to know. He found out about sex.
4 He didn't have to kill her. Could have let her
5 go. At least a conviction for rape is better
6 than a conviction for murder. Could have called
7 9-1-1, couldn't you. You know what? At that
8 point he probably wasn't going to call 9-1-1, but
9 he could have said, no, I don't want to do it.
10 He could have left. He could have gone back to
11 his trailer. But he didn't.

12 So he decides. He goes back into that
13 bedroom and his uncle stabs her, and he takes the
14 knife and he cuts her throat right across here
15 above the Adam's apple. Instead of saying, no,
16 instead of leaving, that's what he chooses to do.

17 There's a second part. He also chooses
18 to help carry her to the garage. He chooses to
19 help uncuff her, to hold her down while Uncle
20 Steve ties her up. He helps carry her to the
21 garage. He could have said, no. He could have
22 ran out that door and said, I can't do it
23 anymore. I just can't do it. This is wrong.
24 But he didn't.

25 Put her in the SUV, or, excuse me, on

1 the garage floor and he's left alone with her.
2 Now, think about that. He's left alone for a
3 moment or two. Probably a minute. He knows from
4 their conversation that Avery's going to go get
5 that gun. He could have ran out that door. He
6 did not have to be there. But he stayed as the
7 silent sentinel for Teresa Halbach's last moments
8 while his uncle fired 11 shots into her body.

9 The final choice was his choice to help
10 dispose of the body, to help cover up this crime,
11 to lie about it. He gets the cart. He gathers
12 the fuel, as we've just said, and they burn her,
13 they incinerate her in their effort to destroy
14 the evidence. The mutilation was made and done
15 for the purpose of concealing these brutal,
16 heinous acts. That's why that corpse was
17 mutilated. That's why it was burned. That's why
18 the fire was tended with the shovel and the rake,
19 to break up into pieces, to create more surface
20 area to burn the body quicker, more efficiently.

21 The cleanup and the coverup. Let's
22 clean up the garage. Let's hide the SUV. Let's
23 burn the bedding. Let's burn her clothes. Could
24 have stopped anywhere. But he didn't.

25 And if he is as innocent as he would

1 have you believe, he didn't have to lie to
2 Detective O'Neill. He who helps the guilty
3 shares the crime. Was he there? Absolutely. Is
4 there any doubt? This is beyond any doubt. He
5 clearly was there. The richness of the detail,
6 the corroborative evidence answers that question
7 as does it the second. Did he help? Did he
8 assist? Was he ready, willing and able to
9 assist? Yes. Did he assist? Yes, he did. Did
10 he help? Did he help Teresa Halbach? No. Did
11 he help Steve Avery? Absolutely.

12 The defendant cannot escape the
13 responsibility for his actions by claiming they
14 were the ideas, that it was the fault of Steven
15 Avery, because, in essence, this case comes down
16 to this very point. The invitation to
17 participate in these monstrous acts clearly
18 speaks to Steven Avery. No doubt. But this case
19 isn't about the invitation, this case is about
20 the acceptance of that invitation, and the
21 acceptance of that invit -- invitation speaks to
22 the defendant, Brendan Dassey.

23 The evidence calls for verdicts of
24 guilty on first degree murder, for second degree
25 sexual assault and for mutilation of a corpse. A

1 weakened sense of responsibility does not weaken
2 the fact of responsibility. And there's only one
3 verdict. Those are verdicts of guilty. And we
4 ask you to return those verdicts.

5 On behalf of the prosecution team, Mr.
6 Kratz, Mr. Gahn, Mr. Fassbender and Mr. Wiegert,
7 we thank you for your time and your
8 consideration.

9 THE COURT: All right. We will recess
10 until 2:00. Uh, ladies and gentlemen, again, I'll
11 advise you the time for deliberations has not yet
12 arrived so don't discuss this or anything about the
13 case amongst yourselves. All right. We're
14 adjourned.

15 (Recess had at 12:48 a.m.)

16 (Reconvened at 2:05 p.m. Jury in)

17 THE COURT: Good afternoon. Is the defense
18 ready to proceed?

19 ATTORNEY FREMGEN: Yes, Judge, thank you.

20 THE COURT: Go ahead.

21 ATTORNEY FREMGEN: In the opening, I -- I
22 explained to you that a good example of a trial is a
23 novel. There's a --

24 THE COURT: Counsel, you may wish to
25 turn the microphone --

1 ATTORNEY FREMGEN: Oh.

2 THE COURT: -- on.

3 ATTORNEY FREMGEN. Thank you, very much.

4 Can you hear me? Okay. Sorry about that. I
5 don't know if you're familiar with Sherlock
6 Holmes. I tend to like Sherlock Holmes novels
7 and there's a novel called the *Memoirs of*
8 *Sherlock Holmes*. And it's actually kind of a
9 compilation of stories, and one of the stories is
10 called the *Silver Blaze*.

11 And if you're familiar with Sherlock
12 Holmes and Sherlock Holmes stories, there's two
13 main characters. There's Sherlock Holmes, who is
14 the intelligent private detective, and there's
15 Dr. Watson, his sidekick, who he often has do the
16 grunt work. Dr. Watson goes and collects
17 statements from witnesses, talks to the police.
18 Dr. Watson is the one who is, essentially, doing
19 all the legwork.

20 And in the *Silver Blaze*, Dr. Watson goes
21 and talks to all of the witnesses and the police
22 officer. And he comes back to -- to Holmes, who
23 has a tendency to sit there and puff on his pipe
24 while he's listening to Dr. Watson, and he starts
25 puffing away as Dr. Watson explains and runs

1 down, this is what we know. We know this, we
2 know this, we know this. And as he's talking,
3 Sherlock Holmes interrupts him and says, well,
4 what about the dog?

5 Watson doesn't understand, and just
6 continues to keep reciting what he's learned from
7 the investigation. And he be -- begins to
8 continue to recite the investigation. And,
9 again, one -- Holmes interrupts and says, well,
10 what about the dog?

11 Finally, Watson says, Holmes, what do
12 you mean, what about the dog? And Holmes says,
13 what did the dog do? Watson starts sifting
14 through his notes and turns to Holmes and says,
15 the dog didn't do anything. And Holmes says,
16 there -- there you have it. I know who's the
17 killer. The killer is a person the dog knows.

18 Essentially, what Holmes -- The story
19 in -- in *Silver Blaze* is that Holmes was able to
20 determine that it's not necessarily what you
21 know, it's not necessarily what you see and what
22 you hear, sometimes it's what you don't see and
23 what you don't hear that's as important. And
24 that's something that I wanted to touch upon in
25 this case.

1 There's a lot in this case that we don't
2 know, there's a lot in this case we don't see,
3 and there's a lot in this case that we don't
4 hear. Much has been talked about DNA, and the
5 State focuses on DNA in their, uh, closing. They
6 talk about it in the trial. They have
7 witnesses -- several different witnesses that
8 explain what DNA is. Sher -- uh, Sherry Culhane,
9 Nick Stahlke. DNA is a very important aspect of
10 this case.

11 But what -- what we know is that they
12 tested over 180 items, over 500 items submitted
13 to the crime lab, not all for DNA, but items
14 individually. What we do know about the DNA is
15 that none of it matches Brendan Dassey.

16 We do know that there are handcuffs and
17 leg irons that were found in Steven Avery's
18 residence. The same handcuffs and leg irons that
19 the State brought out to show you. The same ones
20 that have Steven Avery's DNA on them. But
21 nothing with Brendan Dassey. Or Teresa Halbach
22 for that matter. There is no evidence of DNA
23 matching Brendan Dassey on any of the evidence
24 that's submitted to this Court, to you jurors to
25 consider.

1 Nothing on the rifle. The rifle that
2 was used, according to the State, according to
3 the witness, to shoot Teresa Halbach. There is
4 blood in Steven Avery's house. They find it on
5 the molding. But that's not Brendan Dassey's.
6 They find it in his bathroom. But that, as well,
7 is not Brendan Dassey's.

8 We do know that they decided not to test
9 certain items. The creepers. Now, the creepers
10 seem to be a pretty significant piece of evidence
11 for the State. But what we do not hear and do
12 not see is any evidence that suggests the
13 creepers were actually used by Brendan Dassey.

14 Mr. Fallon mentions in his closing
15 argument that this is how it happened. He
16 analogizes it to a funeral procession. Using the
17 creeper to move the body from one place to
18 another. But there's no blood found on the
19 creeper. And, yet, as important a piece of
20 evidence that this creeper apparently is, if it's
21 brought up by the State as being the item that
22 moved this body to the burn pit, why is it not
23 tested for DNA? The answer we received from
24 Sherry -- Sherry Culhane was, no one asked her
25 to. No one asked her to test it for DNA.

1 She looked for blood. That made sense,
2 because the theory of the State's case is that
3 this piece of evidence, this creeper, about
4 three- four-feet long with wheels, was used to
5 wheel Teresa Halbach to the burn pit. Yet, they
6 decide not to even test the creeper for DNA.

7 The knives. She indicated that they
8 received a number of knives. The police went
9 through Steven Avery's house, took out every
10 knife in the kitchen, sent the items down to the
11 crime lab. The crime lab looked for blood and
12 that was it. There was no blood on them. So
13 they stopped. Why? They were told -- they were
14 not told to test for DNA.

15 Now, State points out during the trial
16 when asked questions of Sherry Culhane, well,
17 could it have been wiped clean? And she said,
18 sure. Would you have been able to obtain DNA if
19 it had been wiped clean? Probably not. But the
20 bullet would -- had no visible blood, and she
21 talked about how they washed the bullet to be
22 able to tell if there was DNA, and that they did
23 find DNA. Teresa Halbach's DNA. So it is
24 possible. Why did they choose not to wash the
25 knives? They chose not to.

1 Brendan's jeans. They had bleach on
2 them. They appeared to be a significant piece of
3 evidence. The State pulled them out, showed you
4 the jeans again. When they tested it, they found
5 no blood. If he were crouched down on the
6 ground, as was presented to you by one of the
7 State's witnesses, why isn't there blood? They
8 could have tested for DNA. But, again, they
9 chose not to. Didn't find the blood. They chose
10 not to test.

11 And the hairs. Again, they chose not to
12 test. It's too difficult. Too much.

13 They went through yards and yards of
14 soil. You saw the pictures. Three, four, five
15 crime lab technicians digging through the soil to
16 find minute pieces of bone and teeth, which they
17 found. The box that Mr. Fallon referred to,
18 showed you the picture of, they found minute
19 pieces of bone by sifting inch by inch, piece by
20 piece through the dirt.

21 But the officer said it was just too
22 difficult to go through hundreds or thousands of
23 hairs in a vacuum. Again, that was their choice
24 not to fur -- fully investigate and fully
25 corroborate Brendan Dassey's statement.

1 The shell casings on the garage floor
2 and the Rambler hood. If you recall, I believe
3 that the first technician from the crime lab,
4 Mr. John Ertl, came, testified, indicated that
5 when he arrove (phonetic) -- when he arrived at
6 the, uh, Avery Salvage Yard, the first thing he
7 noted with the Rav 4 was that it might be, um --
8 it might be -- excuse me -- it might need to be
9 taken immediately to the crime lab because of the
10 in climate weather.

11 One thing he also noted was that instead
12 of processing the Rambler hood and the cardboard
13 box on top of the Rav 4, they sent it down
14 immediately with the Rav 4 to be processed,
15 fingerprinted, checked for blood. Steven Avery
16 has this cut finger and he's leaving blood
17 throughout the entire Rav 4. Certainly there
18 should be or may be some on the Rambler hood.
19 Rather than process it on the field, they sent it
20 to the crime lab.

21 That was the intent of the crime lab
22 tech. Was it ever checked? No. DNA person
23 indicated, no one asked me to. The fingerprint
24 analysis. No one asked me to check for
25 fingerprints. Two, apparently, vital pieces of

1 information, pieces of evidence that one of their
2 own crime lab technicians sent to the lab they
3 chose not to test.

4 The bedding and the carpet. The bedding
5 and the carpet is important to note that despite
6 the statement where Brendan indicates in his
7 statement to the officer that bedding was thrown
8 into the fire, there was other bedding that was
9 taken. The investigators felt it was necessary,
10 important enough to look at, but not test it.
11 The carpet. Never tested. Never checked.

12 The investigators -- Or excuse me. The
13 crime lab, uh, witnesses all indicated, we would
14 have checked had someone told us. So this
15 investigation, they chose not to test items that
16 didn't match with their theory. They'd already
17 decided what happened in this case. They needed
18 to prove their theory. The hairs, they're not
19 going to help their theory. The vacuum's not
20 going to help. Only time they would have looked
21 for DNA is when there was blood or the bullet.

22 The fingerprint analyst testified that
23 he did print Brendan. He also found a number of
24 different prints throughout the Rav 4, including
25 on the outside of the Rav 4 where, one, you would

1 suspect, if they're placing brush, a wooden post,
2 a hood, would have placed their hand upon it.
3 And he was able to actually detect a print. He
4 was able to actually process the print, save the
5 print, and compare the print. And when he
6 compared the print, didn't match the print they
7 had for Brendan Dassey. None of the prints
8 within the vehicle matched the print they have
9 for Brendan Dassey.

10 The fingerprint analyst indicated that
11 he could have checked the handcuffs. It was a
12 smooth surface. Wasn't rusted. He could have
13 looked for fingerprints, but no one asked them
14 to.

15 Could have looked at the leg irons.
16 Smooth surface. But no one asked them to.

17 The creeper. He could have looked at
18 the creeper. If the creeper were used by Brendan
19 Dassey, if Brendan Dassey actually helped use the
20 creeper to move Teresa Halbach's body into the
21 burn pit, then it could have been checked for
22 fingerprints. But it never was because nobody
23 asked them to.

24 The same with the Rambler hood and the
25 rake and the shovel. If they were, according to

1 the theory, using the rake and the shovel to move
2 around the body parts in the burn pit, then that,
3 too, could have been tested. But no one asked
4 them to test it.

5 The State indicated in opening
6 statements that this was the -- an investigation
7 of historic proportions in the state of
8 Wisconsin. From number of individuals involved,
9 to the cost of the investigation, the resources
10 that were used, yet they chose not to test
11 anything that didn't fit into their theory of
12 what they believe occurred.

13 What we don't see up to this point, and
14 have not heard, is anything scientific that
15 matches Brendan Dassey, that come -- that places
16 Brendan Dassey at Steven Avery's at the date and
17 time that Teresa Halbach is killed. No DNA. No
18 fingerprints.

19 If Brendan Dassey is to be believed, and
20 the statements he gave to the officer, then every
21 detail in the statements must be corroborated.
22 Not picking and choosing the ones that fit your
23 theory. The State has picked and chosen those
24 details and presented them to you that fit their
25 theory. But there are a number of uncorroborated

1 details and inconsistencies that they choose to
2 ignore.

3 Brendan claims they used the creeper to
4 move the body into the fire pit. That is what
5 was, uh, presented by Mr. Fallon just rec -- just
6 previous to my closing argument. Again, as I
7 point out, there's no blood found on either of
8 the two creepers. Never processed. Never asked
9 to process for DNA. They would have tested it if
10 someone had asked them to. An uncorroborated
11 detail.

12 The throat. What's interesting to point
13 out about the State's theory is the State
14 indicates they believe, they've argued to you
15 already, that Steven Avery first stabbed Teresa
16 Halbach in the stomach and Brendan Dassey slit
17 her throat. Nick Stahlke from the crime lab
18 testified, and did indicate, that if a person
19 were -- had their throat slit and were alive, it
20 would likely cause what's called "blood
21 splatter".

22 This is Steven Avery's bedroom. This is
23 the bed. This is where the State indicates
24 Teresa Halbach was lying with her arms pinned up
25 against the headboard. The headboard, itself. A

1 wooden dresser. A wall. And, if you could see
2 further, the carpeting.

3 If, according to Nick -- according to
4 Nick Stahlke, if she were alive when, according
5 to Brendan's statement, he slit her throat, there
6 would be blood throughout that bedroom. There'd
7 be blood on the walls, on the headboard, on the
8 posts, on the furnishings, on the carpet. No
9 evidence has been presented to you that anything
10 such as any blood, any splatter, any indication
11 of blood in that area. There's been no testimony
12 and no evidence presented to you by the State.

13 If you recall, I believe John Ertl
14 testified that when they did a luminol test, what
15 Mr. Fallon in -- indicated, as well, in his
16 closing argument, it became -- it came positive
17 right behind the John Deere. When asked, John
18 Ertl indicated that the stain appeared to come
19 and abut up to those boxes. So they did luminol
20 the box. A foot-and-a-half up on the boxes.

21 Why would they go a foot-and-a-half up?
22 Well, if there were blood splatter, blood
23 splatter -- splatter can go up. There might be
24 evidence on the box. There should be evidence on
25 the box. And there wasn't any evidence on the

1 box.

2 Again, the State points out that you
3 must believe Brendan Dassey's statement. If
4 Brendan Dassey's statement is believable, he says
5 to the officers that she was placed into the Rav
6 4 and shot in the Rav 4. That's what he
7 initially says to the police. No blood splatter
8 evidence. There's a swipe of blood. The
9 indication of bloody hair. And as was pointed
10 out by the State in their closing argument,
11 passive blood drops which fall to the -- towards
12 the ground due to gravity, not splatter.

13 Again, in Brendan Dassey's statement, if
14 he is to be believed, every detail should be
15 corroborated. Those are not corroborated.
16 Neither is the mattress. He tells the, uh,
17 officer that there's a blood stain about that big
18 on the bedding. About six to eight inches in
19 diameter. They never found any stain. Didn't
20 find any bedding. But they certainly didn't find
21 any stain on the mattress. They, in fact, if you
22 recall, asked him, did you flip the mattress
23 over? But there was no stain.

24 Again, if you believe Brendan Dassey's
25 statement, as the State tells you you must

1 believe, then there should be rope fibers, or at
2 least rope. Somewhere on this table of evidence
3 should be some rope. Rope used to tie Teresa
4 Halbach's arms, legs and hands.

5 As I pointed out to you before, the
6 State commented that Steven Avery did a good job
7 cleaning up the house. That's why you don't find
8 evidence connecting Brendan, or Steven for that
9 matter, to any injuries that might have occurred
10 to Teresa Halbach within the house.

11 But if he's doing such a good job at
12 cleaning up the house, why such a sloppy job
13 leaving blood in the Rav 4? His DNA is on the
14 leg irons. His DNA is on the handcuffs. If he
15 wiped those clean, his wouldn't show up. But
16 only his show up. Not Teresa's. And certainly
17 not Brendan's. Another uncorroborated detail in
18 Brendan's statement.

19 And where is Teresa's hair? Could be in
20 that vacuum. It's possible. I'll grant you
21 that. But the State chose not to look in the
22 vacuum. Could be in that Bissell, I suppose, but
23 they chose not to look in the Bissell either. If
24 there was hair, according to Brendan's statement,
25 Steven kept it on his dresser. I think he first

1 said he put it on the counter. Upon further
2 questioning by the officer, he changed it and
3 said, well, I think it's on the dresser. And not
4 a lock of hair, as Mr. Fallon pointed out. He
5 told the officers cut her hair right off.

6 The State brought in evidence of a
7 cousin who claimed that Brendan told her, in
8 December of 2005, that he did see Teresa Halbach.
9 In her statement, she says, he said she was
10 pinned in a chair. Contrary to the State's
11 theory. Probably why, when Officer Wiegert was
12 questioned about that on the stand, he referred
13 to her being pinned in the bedroom. Not pinned
14 in the chair. Kayla said, pinned to the chair.
15 When asked, Officer Wiegert said, pinned in the
16 bedroom. Why? Because there is no chair that
17 they could find that would match that story.

18 Brendan's drawing of the bedroom.
19 Certainly it doesn't have to be to scale, but I
20 think it should at least match where items are.
21 If the bed were all the way up against the wall,
22 then that drawing should show the same. That's
23 all the way up against the wall.

24 Another uncorroborated detail, the
25 knife. Where's the knife? According to

1 Brendan's statement, if it's to be believed, as
2 the State wants you to believe, it should be in
3 the middle console of that Rav 4. That's what he
4 told the police when he first talked to them. He
5 said it was in between the front seats of the Rav
6 4. No knife was found in the Rav 4.

7 Later, Brendan changes it and says, oh,
8 he cleaned it up and put it back in the
9 kitchen -- put it right back in the -- in the
10 cupboard or the cabinet. And they got all the
11 knives out. They checked all the knives. They
12 took all the knives down to the crime lab.
13 Nothing with blood on it. Maybe there was DNA,
14 but they chose not to look for the DNA.

15 There is nothing in Brendan's statement,
16 independent of Brendan's statement, that
17 corroborates that there was any sexual
18 intercourse. There's no physical evidence that
19 suggests that. There's no DNA. No evidence of
20 semen or any other bodily fluids in the bedroom,
21 on any other bedding, on the mattress, because it
22 wasn't tested.

23 Which leads us to the inconsistencies.
24 As I said before, that if you are to believe
25 Brendan's statement, as the State wants you to

1 believe, everything, every detail, must be
2 corroborated. If he is so detail-oriented, as
3 Mr. Fallon said, there -- such concise detail,
4 such clear detail, then there shouldn't be any
5 uncorroborated detail. And, certainly, what
6 we've seen is significant amount of
7 uncorroborated detail.

8 But there shouldn't be any
9 inconsistencies either. But there are plenty of
10 inconsistencies as well. Brendan says in his
11 statement, originally to the officers, I helped
12 carry her to the burn pit. Had her by the feet.
13 As he talks to the officers more, he starts to
14 add things. Well, I actually used the creeper.
15 Same creeper that was -- no blood was found.

16 Then they -- he says, well, actually, we
17 placed her body in the back of the Rav 4. If
18 this bloodied body was placed in the Rav 4, why
19 just a small amount of what appears to be bloody
20 hair, some passive blood drops on the door? If
21 this bloodied, stabbed, throat-slit body was
22 placed in the Rav 4, there should be a pool of
23 blood. A stain as big as the back of the cargo
24 area. And there is none.

25 The gunshots. The first person that

1 brings up the idea that she was shot in the head
2 is Officer Wiegert. I believe he even admitted
3 that on the stand. He agreed. Yep, I was -- I
4 brought it up.

5 Brendan says, initially, it's two shots.
6 But he changes it. It's two shots in the head,
7 one shot in the stomach, which is okay. Doesn't
8 change the theory of the State's case. They can
9 live with that. But he goes further. It's three
10 shots. One in the head, one in the stomach, one
11 in the heart. That's different. Then it's ten,
12 which they want to latch on to because of the
13 casings found in the garage.

14 There are bullet holes in the burn
15 barrel. There are guns throughout this salvage
16 yard, different residences, as the testimony
17 showed. These people have lots of guns. It's
18 not unusual to see case shellings.

19 He first tells the officers that she was
20 shot in the Rav 4. That were the case, there
21 would probably be a significant amount of blood
22 in the burn -- Rav 4. But there isn't. Then he
23 gets back, changes it, and says, well, she was
24 shot on the floor. Now, that matches. That's
25 good. Let's keep that statement.

1 It fits the State's theory, so it must
2 be right. You can ignore all the other con --
3 inconsistencies. Ignore the fact that he changed
4 his story. Ignore the fact he first said it was
5 in the Rav 4. The number of times she -- she was
6 shot. Where she was shot. But, remember, it was
7 on the floor because that matches the State's
8 theory.

9 The times are inconsistent. He first
10 says he went to Steven's around 4 or -- 4 or
11 4:30, according to the videotape statement. He
12 also says it was sometime after he got back
13 from -- from school. Sometime after 3:45. Later
14 on, he says it was sometime around 6:30. When
15 questioned further, the times are somewhere
16 between 6 and 6:30. In fact, at the very end of
17 that videotape, he says it was actually around
18 5:30.

19 Now, that might not seem like a big
20 deal. A half-hour here or half-hour there. But
21 it is a big deal, because in order for it to fit
22 into the State's theory, there can't be any times
23 that are close to 5:30, because, as the State
24 pointed out, Mr. Kornely called sometime around
25 that period of time; 5:30, 5:45, 6. As Mr.

1 Kor -- Kornely said, he wasn't sure. It could
2 have been anywhere in that time frame, and they
3 conceded. Absolutely. He called. Probably
4 closer to 5:30, I think, is what Mr. Fallon said,
5 but it probably could have been as -- 5:45, as
6 Mr. Kornely said on the stand.

7 But in order for it to fit, the times
8 need to fit the State's theory, you have to
9 ignore all the other inconsistent times. Ignore
10 the 5:30 at the end of the videotape. Ignore the
11 6 to 6:30. Pick the time that fits the theory.
12 But that's not your role.

13 At the beginning, I mentioned to you
14 what your role is. Actually, I'm sure you all
15 knew your role. Your role is to simply use
16 common sense, make decisions based upon the
17 evidence. Your role is not to be the attorneys.
18 Your role is not to decide who is the victor.
19 This isn't a competition. It's not a basketball
20 game where somebody has to walk away as a winner.
21 If you decide that you have doubt, and it's a
22 reasonable doubt, then you have to acquit.

23 Finally, what I want to talk about, and
24 then I'm going to actually pass on to Attorney
25 Edelstein to finish, and he'll talk about the

1 statements a little further with you, and finish
2 up the closing, I want to talk about the sequence
3 of events that occur according to the videotape
4 statement of Brendan Dassey.

5 Initially, he tells the officers that
6 Teresa's stabbed by Steven Avery and then she's
7 tied up. He changes that and indicates that
8 Steven stabs Teresa, and then gives the knife to
9 him, and he slits her throat. And then Steven
10 chokes her and then ties her up. That's what the
11 State has told you in their closing argument is
12 what happened. They've now adopted that theory
13 of what happened.

14 But does that make sense? Someone have
15 their throat slit and then choked? Why choke
16 someone who just had their throat slit? And if
17 that occurred, there should be a lot of blood in
18 that bedroom. I know we talked about it. I know
19 I've -- I -- I spoke just recently about no
20 blood, no blood splatter. There's no evidence at
21 all that anyone was stabbed or had their throat
22 slit in that bedroom on October 31, 2005, or any
23 other time. The State's theory doesn't make
24 sense. And Brendan's statements are just simply
25 not consistent.

1 At this time I'm going to pass on to
2 Attorney Edelstein. Thank you.

3 ATTORNEY EDELSTEIN: Your Honor, members
4 of the jury, Counsel. Ladies and gentlemen, on
5 behalf of defense team and Brendan Dassey, I want
6 to thank you for your service in this case thus
7 far. But it's a long way from over.

8 We've heard a lot of testimony, and a
9 lot of exhibits have been received as evidence.
10 My colleague just went over with you some of the
11 things about the State's case that should result
12 in a finding of not guilty. So much of the
13 inconsistencies, so much of what the State has
14 adopted as their theory, that they just got done
15 arguing to you within the last couple of hours,
16 is absolutely unsupported by the evidence.

17 When we look at this case, when you look
18 at this case, guided by the evidence and the
19 rules of law that the Judge gave you, ask
20 yourself at some point, since, obviously, it's a
21 huge issue, is his statement reliable? Is it
22 believable? Well, things are believable when you
23 can demonstrate that it's accurate.

24 Now, were there some things that he said
25 that turned out to be accurate? Of course. But

1 the State has told you before and insists that
2 this is only because someone there would know. A
3 participant. But that's not necessarily true.
4 These instructions tell you about a reasonable
5 hypothesis, and I'm going to revisit that here in
6 a little bit.

7 Since, I guess, I'm among the
8 technically challenged here in the group, and you
9 guys have been looking at pictures all week, if
10 it's something critically sent -- important, I
11 guess I'll resort to the ELMO. We do have some
12 slides we want you to look at.

13 But let's begin with Brendan. That's
14 where I get to use this. Brendan's 16. At the
15 time, he was in the tenth grade. He has some
16 special education classes. He likes video games.
17 How many times -- and think about it, even on
18 that 3/1 statement -- how many times did the
19 police tell him, Brendan, start over again.
20 Start over again. What did you do? I got home,
21 got off the bus, played video games.

22 What else do we know about Brendan? We
23 have school records. We know from the school
24 records that he consistently does not look adults
25 in the eyes. It would be very easy -- And these

1 instructions allow you to use your common sense
2 and you should use your common sense. Anybody
3 that's ever been around kids, and they're feeling
4 bad, and if they did something, they kind of hang
5 their head, they don't want to look at you. And
6 it would be awful easy for the Government to get
7 up here and say, all you have to do is look at
8 that. All you have to do is look at him. And
9 he's covered with guilt. But he's not.

10 Brendan is expressionless. And, for the
11 record, and for the benefit of you members of the
12 jury, Exhibit 224. This is from his school.
13 Brendan is expressionless. No facial expression.
14 Seemingly blank stare, possibly indicating
15 daydreaming.

16 This isn't something new. This isn't
17 something that results because, as the State
18 wants you to believe beyond a reasonable doubt,
19 and that's the standard, beyond, that somehow
20 he's acting funny because of the way he comes
21 across in that video. That he's acting guilty.
22 They want you to surmise things. This isn't
23 about surmising. It's not about guessing. It's
24 about them meeting their obligation under the law
25 to prove each element beyond a reasonable doubt.

1 What else did we learn from the school?
2 On Exhibit 220, this was completed September of
3 2005. It describes various tests that were given
4 to Brendan.

5 Recalling sentences as a subtest.
6 Age-equivalent, five years and eight months.

7 Formulating sentences; nine years, nine
8 months.

9 Number repetition. Mr. Fallon, during
10 the cross-examination of Brendan, talked to him
11 about how well he did in math. Number repetition
12 forward; age-equivalent, five years, three
13 months. Backwards; six years, three months. His
14 percentile ranks are so low that it's sad.

15 Now, that is not to say that because he
16 may be a pathetic character, and I don't hesitate
17 to say that because nobody can choose their
18 family, you can't choose your parents, you can't
19 choose your uncles, and you can't choose your
20 cousins, and that's sad enough, that's not to say
21 that that negates the horrendous and horrific
22 tragedy that befell the Halbach family. But that
23 is not the issue. The issue is, have they proven
24 each element of every count they have accused him
25 of? That's where you folks come in.

1 We know from the school records that
2 there are specific learning disabilities. Speech
3 or language impairment. Now, why is all this
4 important? We'll get to Dr. Gordon here in a
5 minute. But why is this important about who
6 we're dealing with here? Who everybody here is
7 dealing with. Ultimately, you folks.

8 These officers, when the case began --
9 Now, I'm not going to sit here and say, well,
10 they're bad guys. No, they're not bad guys. But
11 I will sit here and say they did a bad job. Ask
12 yourselves, when you look at this, if they did a
13 bad job, and there's not the degree of
14 reliability in the statement that you believe is
15 required under the law, then you're going to
16 disregard it. When you disregard it, you've got
17 a table full of physical items, they're surely
18 not going to prove anything beyond a reasonable
19 doubt.

20 What did the officers do? You remember
21 Detective O'Neill from Marinette. And I remember
22 him because, I'm not trying to pick on him, but
23 we saw a lot of witnesses, and he had the biggest
24 thing hanging out of his pocket that I've ever
25 seen. He's the first one talked with him for

1 over an hour.

2 How did this begin? Remember, he said,
3 I had minimal information. Now, I bring this up
4 because -- because, as we have suggested and
5 believe to be the case, the police and the
6 prosecution are, to use the phrase of the
7 prosecution earlier in this case, "cherry
8 picking." We like this part of his statement,
9 but we're not sure about that, so we're just
10 going to stay away from it. We like this part of
11 his statement. But they were cherry picking.

12 When they testified, for example, they
13 didn't -- even O'Neill -- And he had no reason
14 not to give it up, but he claimed he had minimal
15 information, which really wasn't true. He knew
16 the Rav 4 had been found. He knew Brendan, uh,
17 was to be interviewed. He was in contact with
18 Skorlinski, from DCI, who was in contact with
19 Fassbender, from DCI, who was literally at the
20 command post at the Avery property. But even he,
21 when asked, well, did you get argumentative with
22 him? No, it was just kind of a give and take.
23 In his own report, he used the word "confronted".

24 Now, I expect at some point you're going
25 to hear an argument -- because the State gets

1 another opportunity to talk to you and we
2 don't -- but you're going to hear an argument
3 about, well, this is just good, proper technique.
4 And that might be true if you're dealing with
5 someone of average, normal, typical intelligence,
6 demeanor and memory. But neither O'Neill, the
7 first one, or Fassbender or Wiegert, the two lead
8 investigators, really knew much, if anything,
9 about this young man before they talked to him.

10 I think Wiegert admitted that. He
11 didn't check the school. He didn't know anything
12 about him. But this is not the typical young
13 man. He might have been on this earth for 16
14 years at the time, but he didn't act like it and
15 he didn't think like it.

16 And isn't it incumbent upon the
17 Government, when they bring these type of
18 allegations, to be able to satisfy you beyond a
19 reasonable doubt that the evidence that they're
20 asking you to rely upon is, in fact, credible
21 and believable and not tainted because of things
22 that may have been said or done.

23 I asked all these officers about
24 promises. And you folks, you had an opportunity
25 to see the tape, you had an opportunity to listen

1 to it. You've heard portions of it twice. Okay?
2 These are but excerpts. Excerpts from that.

3 Excuse me, if I might, but before --
4 before we even get to that 3/1 interview, keep in
5 mind that on two separate occasions on the 27th
6 Brendan was talked to. What did Wiegert say when
7 asked in response to when Brendan Dassey became a
8 suspect? He didn't become a suspect until
9 March 1. You folks can see what's up on the
10 screen. It's a rights waiver. It's the **Miranda**
11 warning. And didn't Wiegert say there's a big
12 difference between interviews and interrogations?
13 We don't read rights to people we're just
14 interviewing, trying to get information. He's
15 just a witness. He's just a witness.

16 But on the 27th, when they go down to
17 Two Rivers, lo and behold, Brendan, we're going
18 to read you your rights and you're going to sign
19 this waiver. Why is that? Was he telling you
20 everything there was to tell? It's all these
21 little things that accumulate, that build back
22 some of those bricks of the wall of innocence
23 that surrounds him, which is that presumption of
24 innocence that all of you swore that -- on your
25 oaths, that you would abide by unless and until

1 the State dismantled it by proof beyond a
2 reasonable doubt.

3 Again, one little item, in and of
4 itself, not a big deal, but it's an accumulation
5 of things, and you have to carefully scrutinize
6 everything they bring you before you can decide
7 if they've reached their burden. And if they
8 have not, you must acquit.

9 But here they are on the 27th. They
10 talk to him in Two Rivers. They have him sign
11 that.

12 Mark, can you switch that back?

13 We talked earlier, and there was
14 testimony on cross-examination particularly
15 about, well, what did you say to him? And this
16 ties in, folks, with what Dr. Gordon had to say.
17 And you're entitled to use your own common sense.
18 Would someone -- And this is a question you're
19 going to ask yourselves. Would someone admit to
20 something, especially a terrible crime, if it
21 wasn't so? Well, would any one of us? Maybe
22 not. But, here, we're not talking about us,
23 we're talking about Brendan.

24 Now, he is not ready for the
25 institution, but he's not going to go work at

1 NASA either. And he might be lucky to even work
2 down at the local machine shop. We know from the
3 academic testing, we know from the testing from
4 Dr. Gordon, he is at the lowest of the low
5 average and then borderline range of intelligence
6 and functioning.

7 But what do the police do? Go back to
8 our little slide show. There's promises, there's
9 praise, there's negative feedback, lies, and
10 suggestions. Now, they like to give it other
11 terms. It sounds, I guess, a little softer. In
12 fact, that's how they talk about the soft room.

13 I asked Wiegert, do you think you're a
14 little smarter, maybe a little more sophisticated
15 than Brendan? At first, he really didn't even
16 want to answer that, and then he finally said,
17 well, I should hope so. Well, I should hope so,
18 too.

19 You have an unequal -- an unequal
20 balance between the interrogators and Brendan.
21 What are some of the things that are said? We're
22 in your corner. We're on your side. Okay. You
23 don't have to worry about things. We'll stand
24 behind you. You're the good guy here. This is
25 critical. These type of statements. Look at the

1 last one. If I don't believe in you, I can't go
2 to bat for you.

3 Anybody that's ever had a child has used
4 somewhat of that same technique. I'm not going
5 to take you to the party. I'm not going to take
6 you to, uh, McDonald's to play in the balls. I'm
7 not going to take you to go get ice cream unless
8 you -- you're honest about what happened. In
9 other words, tell me what I want to hear and then
10 you get what you want.

11 The honest person's the one that's going
12 to get a better deal. Yet, when I asked him, did
13 you promise him anything? No, I wouldn't do
14 that. A better deal? It's not your fault. If
15 someone is repeatedly drilled that just tell it
16 to us, it's okay, it's not your fault, nothing's
17 really going to happen to you, don't you think
18 they might be a little bit more easily persuaded
19 to adopt what they are suggesting that they
20 adopt? And that occurs repeatedly.

21 We're going to help you through this,
22 all right? He even goes so far as to go over
23 there, patting him on his knee. At one point,
24 I'm sure you folks remember, during the course of
25 that video, Detective Wiegert's over there, he's

1 sitting on the -- the couch in the soft room,
2 here, draw this picture for me.

3 Says -- he tells you. And, again, not a
4 big deal, in and of itself, but it's an
5 accumulation. Why is it they don't want to tell
6 you everything? Just give it up. It's not
7 that -- that important. But part of it is
8 because they take the position, we're right,
9 nobody else's opinion matters, and you have to
10 accept what we say hook, line and sinker. We're
11 the professionals. We know better than you.
12 Well, it's a good thing that not everybody on a
13 jury is a police officer, because the defendant
14 would never have a fair fighting chance.

15 What about praise? Okay, Brendan,
16 you're doing a good job. When they hear what
17 they want, they praise him.

18 It's like patting the puppy and -- on
19 the head and giving him a treat when trying to
20 get him paper trained and you get them outside
21 and you go. You're doing a good job.

22 You're doing the right thing. Don't let
23 us down. I think you're doing a real good job up
24 to this point. That makes sense. Now we can
25 believe you.

1 Keep in mind, and I think that's coming
2 up here in a little bit, how many times he was
3 told, we don't believe you, give us the truth, be
4 honest with us. I think I asked Wiegert, well,
5 how many times did you say that? And he didn't
6 know. I wouldn't expect him to. I wouldn't
7 expect him to sit there and count, in the course
8 of a lengthy, three-hour interrogation, the
9 number of times he or his partner suggested to
10 Brendan, come on, be honest. Quit lying to us.
11 I wouldn't expect that. But it happened a lot.
12 And it's consistent with this technique.

13 And it wasn't so much at that point that
14 they're interested in getting the truth so much
15 as they want some information. Now, they took
16 that information and ran with it and made it
17 match as best they could. But, still, they
18 insist only a person who participated as party to
19 the crime would know these things. And that,
20 folks, is not true.

21 Your cooperation and help with us is
22 going to work in your favor. Now I can start
23 believing you. Here's some of the negative ones.
24 You're making this hard on us and yourself.
25 Don't start lying now. Be honest. You're just

1 hurting yourself. Oops, I'm sorry, I went a
2 little fast. You're just hurting yourself if you
3 lie now. These are just a few -- a few of the
4 things that were said to him in these type of
5 techniques.

6 What are some of the lies? They said
7 they didn't lie to him. They called it
8 "deceptive practices". It's going to be a lot
9 easier on you down the road if this goes to trial
10 and stuff like that. Why not tell somebody that?
11 It's absolutely untrue. But if they admit to
12 things, and you don't verify that what they say
13 is correct, how is it easier on him? You're
14 putting him in a box. They convince this boy, it
15 doesn't really matter, just tell us, we're your
16 friends.

17 At one point, I think Wiegert -- I think
18 it's in our presentation -- talks about, I just
19 want to give you a hug. No police officer, who's
20 investigating this type of an offense, vicious
21 and cruel as it was, can honestly sit there with
22 a straight face and tell you folks, I just want
23 to give this young man a hug when I think he had
24 something to do with this.

25 I'm your friend. Where was she? Come

1 on, we know this already. We know you were back
2 there. And he's talking about the bedroom. We
3 know you were back there. Where's the physical
4 evidence to support that? He wasn't confronted
5 one time.

6 You've all seen this on TV. They're
7 talking to somebody, oh, come on, we know you did
8 it. Somebody says, I didn't. They throw
9 something in front of him and say, well, there's
10 some pictures, here's some prints, here's this,
11 here's that.

12 They had -- they didn't know it -- this.
13 They kept accusing him of it without one piece of
14 evidence to back it up. And, eventually, he
15 adopts some of it. Of course they're going to
16 tell you, well, that's because he finally broke
17 down and told the truth. However, when they make
18 that statement, I challenge you folks to discern
19 for yourselves how much of what he said is true
20 and try to answer that question by what they
21 brought you. By what they brought you.

22 Even his own cousin, who they brought up
23 on the stand, it doesn't match. She's pinned up
24 in a chair. That's ridiculous. They never even
25 followed up on that.

1 How is this for a lie? Truthfully, I
2 don't think Steven intended to kill her. Awe,
3 Brendan, just tell us, because it was probably an
4 accident. We don't even think Steven intended to
5 do it.

6 What happened to Teresa was horrendous.
7 Steven Avery preyed upon that girl when he called
8 and said, send me the same girl. We know what
9 dates she'd been there before. She'd been there.

10 Now, that man -- young man, he's not
11 dead, and he hasn't been through a fire pit, but
12 if you do what the State asks, he might as well
13 be.

14 There's the hug. How about suggestions?
15 This is where they get to the part of saying,
16 well, now, you know, in order for us to believe
17 you, all you have to do is say you did some
18 things, because then we'd probably believe you.
19 It's not your fault. He makes you do it. It's
20 okay. He was telling you to do it. What does
21 Steven make you do? You went back into that
22 room.

23 Some of these are doubles. We'd be here
24 all day if we listed every single one and every
25 single category of lies, suggestions, promises.

1 The point simply is, this went on over and over
2 and over again. Was his will overcome? Did he
3 say these things because he'd had enough? We
4 know he's highly suggestible. You were there
5 when she died. You helped tie her up, though,
6 didn't you? What he made you do. We know he
7 made you do something else. I think he probably
8 told you.

9 You went over to his house. When the
10 times didn't match, but they wanted it to match,
11 their theory, they continually, repeatedly told
12 him that his times were wrong. Yet, there's
13 nothing, whatsoever, to suggest that the Kornely
14 information is wrong.

15 They're saying that he went over there
16 twice. Now, ask yourselves this, folks, would
17 this young man, even Brendan Dassey with the
18 limitations he has -- And like I said, he's not
19 ready for the institution. But would this young
20 man walk in, who's been described, not only by
21 the school personnel, as quiet, reserved,
22 respectful, tested out that way with the
23 counselors, the teachers, the other professionals
24 who examined him, is he just going to walk away
25 from that trailer like they want you to believe?

1 What was his brother's testimony? I got
2 off the bus. I saw Steve Avery walking over to
3 that burn barrel. The same burn barrel where
4 Teresa's property was found. What time was that?
5 That was when they were walking home. His own
6 brother said that. Their witness.

7 How many times did you shoot her?

8 Now, Mr. Fallon stood here and told you,
9 not less than twice, that Brendan Dassey never
10 pulled the trigger. He told you that. That's
11 their theory. They believe that.

12 However, examine the statement. When
13 Wiegert and Fassbender were asking him questions,
14 again, without really having much contact with
15 him, without knowing his cognitive limitations,
16 without knowing how his ability to receive and
17 process information and language, whether it was
18 a good talent that he had, a poor skill, they
19 asked him things like, how many times did you
20 shoot her? They don't even say who they're
21 talking about. And it's in there. If it would
22 say, how many times did Steve do it? How many
23 times did you do it? And they're going to talk
24 about resistance. How he resisted that.

25 But the truth of the matter is, a couple

1 of times, when they weren't specific about who
2 they're even talking about, he gives an answer,
3 such as a number. And it changes. It bounces
4 back and forth. He was confused. He was scared.

5 And let's just briefly touch upon that.
6 Ask yourselves, how probing were they when he
7 told them, I seen it. And he said, he told, he
8 seen me see it, so he told me not to say
9 something or else it will -- he threatened me a
10 little bit. He made it clear to them early on.
11 And they had no reason to doubt it. They just
12 didn't like the answers. They didn't like what
13 he said. But they never explored the potential
14 truth and alternative that this young man walked
15 over there and did see something in a fire, and
16 that something was Teresa Halbach.

17 They go through this scenario, and they
18 start -- once he tells them, I seen it, and Steve
19 knew it, and he said, don't say anything, that's
20 when it becomes, you saw this, you saw that.

21 They admitted, and Wiegert testified to
22 it, you saw it on the video, they brought up
23 specific facts, again, that they claim only
24 somebody involved would know, which at some point
25 he adopted. But his adoption doesn't make it

1 true.

2 You all heard the phrase "you can't
3 believe everything you read in the newspaper."
4 Well, you can't, necessarily, believe everything
5 Brendan Dassey says on a video, because there's
6 no independent verification from a source -- from
7 any source.

8 We know you shot her, too. Now, how
9 dare the State of Wisconsin come into the
10 courtroom in this state, that statement having
11 been given to a cognitively limited young man,
12 flat out accusing him of picking up that gun and
13 shooting this poor girl. And they didn't do it
14 just once. We know you shot her, too. Where?
15 Where is the evidence to support that?

16 He's making it up on the fly. Sounds
17 good to us. Let's see if he accepts it or
18 rejects it. Why would you even do it when you
19 combine that with the types of promises, offers
20 of leniency, telling him it's okay, he didn't do
21 anything wrong, somebody else made him do it,
22 especially when you're dealing with someone like
23 Brendan Dassey. Why?

24 And, yet, have the audacity to come in
25 here today and say, we know he didn't do it.

1 Steve Avery shot her. But he helped. He was
2 there. This isn't guilt by association. This
3 isn't guilt by what family you belong to. It's
4 guilt by proof beyond a reasonable doubt. And if
5 they don't climb that ladder, you don't give it
6 to them.

7 What did he do under the hood? They're
8 the first ones that brought this up. You saw the
9 hands and the forehead. Now, I can sit up here
10 all day long and talk about these techniques,
11 these statements, whether it's believable or not.
12 Obviously, we believe it is not. It is not
13 reliable, because it is not true that only a
14 person who participated would know these things.

15 How many times during the course of that
16 discussion on the 1st did they say, come on,
17 Brendan, we know you and Steven talked about it.
18 Mr. Fallon just got up here and told you. And
19 then they went from that bedroom into that front
20 room and had a little chat. That's how he
21 characterized it. A little chat about what
22 they're going to do. How they're going to get
23 rid of Teresa.

24 It's more likely that little chat
25 happened when he walked over there expecting a

1 Halloween bonfire, and went around with the
2 little cart, and picked up all the stuff, and
3 eventually they start throwing stuff in there,
4 and he probably did see something. Pretty
5 traumatic. Is that reason enough for a young man
6 to be despondent? To be sad? Is that a
7 reasonable hypothesis?

8 This is straight from the instruction.
9 If you can reconcile the evidence upon any
10 reasonable hypothesis consistent with the
11 defendant's innocence, you should do so and
12 return a verdict of not guilty.

13 That's a very reasonable hypothesis.
14 When he went over there, and I'm sure every one
15 of you is sitting here right now and saying,
16 where's this lawyer coming up with this? Brendan
17 was up on the stand. And he says he got it from
18 a book, and he said, "I don't know" countless
19 times. But he did tell the police. He did tell
20 the police he saw things. Steve threatened him.
21 He told him to keep his mouth shut.

22 Is this a young man whose memory
23 skills -- And this isn't just based upon what
24 people like to characterize as the "hired gun".
25 It's not just based on Dr. Gordon. The school

1 has no reason to tell you anything that's not so.
2 We know he has these difficulties. It's easy for
3 the State to say, well, the school said he's not
4 suggestible. The school never tested him for
5 that. They didn't test him. They had no reason
6 to test him.

7 Let's look at Dr. Gordon. You remember
8 him. And he's the gentleman going down to St.
9 Louis University. He's been in practice for
10 quite some time. In fact, we had quite the array
11 of specialists and experts in this trial. But
12 that, in and of itself, no matter how much, the
13 instructions tell you it doesn't matter how many
14 witnesses. It's not a balance like that. They
15 had more so they win. That's not how it works.
16 It's not a question of qualifications. Well,
17 they had a lot more experts.

18 But here's Dr. Gordon. He administered
19 these tests. He's shy. Socially avoidant. And
20 he has cognitive limitations. Borderline to low
21 average intelligence. In fact, he came in and
22 said the two different IQ tests that he provided,
23 which are done as a check against one an -- one
24 another, were actually a little bit higher than
25 what the school had. His bottom line conclusion?

1 Very vulnerable to suggestion.

2 You recall when Dr. Gordon was
3 testifying, he gave you this information about
4 some of these tests -- various tests that he
5 administered. I don't think there's much dispute
6 about the IQ. That's fairly obvious, even in the
7 video. And if it wasn't obvious in there, folks,
8 if you believe that that poor boy was acting up
9 there, then we should all chip in and buy him
10 Academy Award. He does haven't that kind of
11 skill. You saw him.

12 But look where he falls on the 16-PF.
13 On the lowest end. Well below average. He's not
14 independent. He's not socially bold. He's not
15 dominant. So when Mr. Fallon suggests he had all
16 these choices, did he really? When he walked
17 over there and saw what he saw, what choice did
18 he have? What choice did he have?

19 Don't hold it against him because he
20 said things like, well, I don't like the police
21 like the rest of my family. He can't pick his
22 parents. He can't pick his uncle. But look at
23 the results on that. That's not someone who's in
24 a position to turn around and either walk away --
25 he probably had no clue what to do. None.

1 Ask yourself, on this Gudjonsson
2 Scale -- Now, they brought Dr. Armentrout in who
3 said, I've been around forever, I know what I'm
4 doing, and I've never heard of this thing other
5 than what I've looked up on the internet, and I
6 know the guy's from Iceland, now he's in England.
7 And I really think it's stupid when you ask
8 somebody, um, about being on holiday. Maybe so.
9 But that's only one question. There wasn't
10 anything else he talked about. But Gordon
11 administered the test. It's a recognized,
12 acceptable test.

13 So many years ago, when the prosecution
14 came in and said to judge after judge after
15 judge, we want to use this scientific evidence
16 called DNA, it met with a lot of skepticism, but
17 has become accepted and reliable. This is no
18 different than any other measurement tool. He
19 was qualified to give it, and those are Brendan's
20 results.

21 You heard the testimony about the shift
22 and the yield. And it wasn't just from Gordon.
23 And what does that really mean? Basically, you
24 give somebody a lot of feedback that's negative.
25 He didn't like your answer. Are they going to

1 change it? Yes. And this is a one on one. This
2 is not some kind of group dynamic test. This is
3 one on one. He's faced two on one with very
4 skilled, experienced officers, who, between the
5 two of them, have got probably about three times
6 as much experience just in their law enforcement
7 career as many years as that boy's been alive.

8 And when asked, did Wiegert say, in
9 response to the question, well, isn't it true
10 that when you gave him negative feedback, that he
11 changed his answer for you? Yes. Isn't it true
12 that when you provided or suggested an answer to
13 him, he changed his answer? Yes, that's true.

14 Like I said before, folks, I'm not here
15 sitting here telling you that they're bad guys.
16 They're not bad guys. But this is how they're
17 trained to do this. But you don't apply the same
18 techniques on every single person. This is not
19 cookie cutter justice. One size does not fit
20 all. And it is incumbent upon them, when they
21 bring you what they characterize as a
22 "confession", to convince you that it is reliable
23 enough that you can hang your hat on it. And in
24 this case, you simply can't.

25 Was it an error? Certainly, it could

1 have been done better. I think they would even
2 acknowledge that. But that's what we have. And
3 that's what we have to deal with.

4 They might get up and argue, well, gee,
5 you heard this testimony about his ability to
6 resist things, which is not very strong, but he
7 resisted the shooting.

8 What about the phone call to his mom?
9 You guys heard that. Who does all the talking?
10 Barb does all the talking. You could have been
11 the hero. Yeah. That's kind -- That's more of a
12 response. It's not an affirmation in that phone
13 call.

14 And, again, trust your collective
15 memory, folks, if it's been different than mine.
16 I know you guys have your little pads the Court
17 gave you with all those notes of the testimony.
18 That's mine. I'm not going to sit here and go
19 through it. Not right now. But I've looked at
20 it every day during the course of this. But if
21 you remember it different, trust your memory.

22 Did he ever say -- Did his mom ever say,
23 did you kill that girl? Did Brendan ever say,
24 oh, you bet. No. That's not what happened. It
25 was something like, did you do those things? And

1 what was his answer? Some of it. Some of what?
2 Some of standing around the fire? Some of
3 picking things up with the golf cart? What does
4 that mean to him? It's not that clear. It's not
5 clear beyond a reasonable doubt. Never, ever
6 take anything out of context. You have to look
7 at everything.

8 If all it was was a matter of simply
9 saying, yes or no, we'd have left here days ago.
10 In fact, I made a point of demonstrating with
11 Detective Wiegert just how easily Brendan would
12 go along. How many times did Wiegert say things
13 like, Brendan, say yes or no. And Brendan would
14 go, yes. I remember one other time, same
15 interview, Brendan, say yes or no. No. He's
16 doing what he's told.

17 His limitations are such that he can't
18 go from the question up at the top of the page,
19 halfway down when they're coming back to it, when
20 they have interposed in between there promises,
21 assurances, lies. And then they come back and
22 say, aren't we right? He might say, yeah.

23 Tattoo's a perfect example of that.
24 They claimed, and they presented to you, that
25 they brought that up as an example of how he

1 could resist suggestion. Wrong. They're just
2 wrong. All he did was say, in response to
3 Wiegert, when Wiegert insisted that Teresa had a
4 tattoo, was when -- because I think the question
5 was, do you disagree with that, and he said, no,
6 but I don't know where it is. That makes no
7 sense. They want you to believe that the
8 response means one thing when, in fact, it means
9 something totally different.

10 The reliability of that video, of that
11 statement, is such, combined with the expert
12 testimony that's been presented in this case,
13 which has not been refuted, Armentrout has never
14 even heard of this, and the only thing he could
15 do is say, well, I don't see any notes on the
16 score sheet here, so I don't have a lot of faith
17 in this.

18 These are some things we already talked
19 about. Gordon's assessment's consistent with the
20 school. He has memory deficits. And Armentrout
21 doesn't know much about this test.

22 Mr. Armentrout went so far as to say, I saw the
23 word "suggestible" one time when I was checking
24 the internet. And, again, he offers his opinion
25 about why Gordon shouldn't be believed. But

1 there's no basis for that.

2 Ladies and gentlemen, on behalf of
3 Brendan Dassey, Mr. Fremgen, myself, I want to
4 thank you for your service in this case. It's
5 been a long period of time. But this is so
6 important that you abide by your oaths that you
7 took when we first met you, when this case first
8 began, and to deliver a true verdict based only
9 on the law and only on this evidence.

10 And when you review it all, and you
11 listen to one another, and you take the time
12 necessary to consider it, and use your common
13 sense, and don't just rubber stamp the version
14 they provide you, keeping in mind it is their
15 burden, and it's an awesome burden, that they
16 have not -- they have not removed those bricks of
17 protection, that presumption of innocence that
18 surrounds him.

19 Don't convict him because this was a
20 horrible thing. Don't convict him because he
21 couldn't pick his parents. Don't convict him
22 because he simply doesn't know and he's honest
23 about it. If he doesn't know, and you believe
24 him, and you judge him like you would anyone else
25 under the instruction on credibility, you should,

1 and we hope that you will, return verdicts of not
2 guilty on all counts. Thank you, very much.

3 ATTORNEY FALLON: Would you like me to
4 go or do you want to take a break?

5 THE COURT: Uh, let's take 15 minutes.

6 ATTORNEY FALLON: All right.

7 THE COURT: All right. We'll be back
8 at, uh, ten of the hour.

9 (Recess had at 3:33 p.m.)

10 (Reconvened at 3:50 p.m.)

11 THE COURT: Mr. Fallon.

12 ATTORNEY FALLON: Thank you. Let me
13 begin by making two points crystal clear. We are
14 here and we're here for one reason; there's no
15 issue, there's no doubt, we're here because the
16 defendant has a constitutional right to have us
17 prove him guilty. That's why we're here. That's
18 what we've done. There's no mystery here.
19 There's no issue here.

20 Point number two, for all that stuff
21 that Counsel showed you on the screen, and for
22 all this testimony, I think there's one thing
23 that's inescapably clear about the defendant,
24 while not the sharpest knife in the drawer, he's
25 clearly low average intelligence, he's a

1 mainstream student, he's got two special classes.

2 All right. And I think Counsel probably
3 misspoke, but let me clarify something. He
4 wasn't reading as a five-year-old, he was reading
5 as a fifth grader. Let's just keep that clear.
6 Because he had some difficulties in reading,
7 which certainly makes one wonder as to what books
8 he was reading by the way. But we'll get to
9 that.

10 First point, and I want to make this
11 point because I think it's significant and it
12 feeds into the whole question of suggestibility,
13 or I -- should I say, the absence thereof. And
14 those are the statements to Kayla Avery.

15 Now, let's think about that. She's
16 telling us in a statement, in which she denied on
17 the stand, but she had a conversation with the
18 defendant in December about body parts and people
19 being pinned up. And while she thought he said
20 "chair", we got pinned up, and we got body parts
21 in a fire, we got blood coming out of concrete
22 floors; right?

23 Now, think about that. She was so
24 upset, so moved by that revelation that she went
25 to her counselor in early January. Now, if you

1 were 16 years old, if we were in a situation like
2 this, what would be the most disturbing images
3 for the experience if you really had experienced
4 it? It would be those images of a woman pinned
5 up. Of body parts in a fire. Of blood coming
6 out of a concrete floor.

7 Those are the things that would stick
8 with you in your memory. And I tell you that
9 because you know what? That's why he confessed.
10 Because he couldn't live with it. And it started
11 to eek out in his discussion little by little.
12 Peeling the onion, little by little, to his
13 cousin first. His peer. Followed by all that
14 trauma that winter. The loss of weight. The
15 tearful sessions. Sitting at a birthday party
16 and he's in tears because he's by himself. Why?
17 It's not because he lost a girlfriend, it's
18 because he couldn't live with it.

19 And when we get to the discussion of the
20 interrogation, that's the angle the officers
21 took. That's why he confessed.

22 All right. Theme two, the absence of
23 DNA or the absence of evidence. Well, it's been
24 a while since I had my human anatomy class, but
25 there was certainly a question about why there

1 isn't just oodles of blood all over that room if
2 there was someone's throat cut. But think, now.
3 Think about that description the defendant gave
4 you on the videotape. As I said, across the
5 front of the throat. And I believe -- my
6 recollection is it was above the Adam's apple.

7 Now, the last time I looked, the carotid
8 artery, or the jugular vein, which it seems to be
9 in common parlance, are on the sides of the neck.
10 You're not going to have a whole lot of blood
11 splurting (phonetic) around with a cut across
12 here. Which, by the way, is the correct
13 testimony of Mr. Stahlke from the crime lab. The
14 blood spatter expert.

15 Sure, if you cut somebody on their
16 carotid artery, you're going to have blood
17 spurting. If you cut them across here, there
18 isn't going to be a lot of blood. And that's
19 also consistent with, and also makes the
20 defendant's version credible because he wasn't
21 entirely sure that he wanted to cut all the way
22 through. As he said, he put his fingers up like
23 that and showed you a small cut. Not a
24 laceration. Not a severed artery or vein.

25 There's not more evidence in that room

1 because the bedding is burned. He tells us that.
2 The defendant is cleaning up. What's he going to
3 do? Not put bedding back on a bed? He's got to
4 sleep. He doesn't know when and if the police
5 are ever going to come. He's cleaning the room.
6 He's going to put fresh bedding on there.

7 And, remember, he's got four days to
8 clean up. Tuesday, Wednesday, Thursday, Friday.
9 That's four days. The police show up on
10 Saturday. Four days to clean that house. Four
11 days to clean.

12 He already knows about bleach. We got
13 bleach all over the garage. You think it takes
14 two seconds to wipe down some handcuffs?
15 Absolutely not. Counsel was saying, well, why
16 didn't they wash the handcuffs? Well, there's a
17 difference between handcuffs sitting around for
18 four days in the exclusive possession of Steven
19 Avery and a bullet that neither one of these guys
20 knew existed being found four months later in the
21 garage that she was able to obtain a profile
22 from.

23 And probably most importantly, and let's
24 talk about this, just because there is no DNA
25 profile, just because there were no fingerprints

1 of the defendant present doesn't mean he wasn't
2 there, doesn't mean he didn't do it. As Ms.
3 Culhane told you, very easy, it's still fragile.
4 DNA degrades. DNA gets cleaned up.

5 Mr. Riddle told you fingerprints
6 entirely dependent upon the nature of the
7 substance and to atmospheric conditions, weather
8 conditions. After all, what did he tell you?
9 They're 98 percent water. That's why there's no
10 prints.

11 On a car hood sitting outside for four
12 days, which, by the way, last time I looked that
13 car hood isn't exactly like your brand new car
14 off the showroom such that it's going to hold a
15 print. I'm surprised the defense didn't try to
16 sell you a bill of goods and say, jeez, why
17 didn't they test the car seat for prints?

18 I'm not going to even address the hairs
19 in the vacuum cleaner. That -- that's
20 ridiculous.

21 The best example for the absence of
22 evidence, even though we know someone was there,
23 is Steven Avery. He's driving the vehicle. He
24 drives it down there; right? He's opening the
25 doors. He's driving the vehicle down there. His

1 prints aren't on there either, are they? They're
2 not. We know he's there because his blood was
3 there, because he left his blood there.

4 Counsel will say, well, why didn't he
5 clean that up? Because he didn't think he had
6 to. Because he was going to crush that car.
7 That's what he was going to do with that car.
8 Don't have to worry about cleaning up the car.
9 Another day or two, that car would have been
10 gone.

11 And, finally, why is there no defendant
12 DNA there? Well, the last time I looked, I don't
13 think anyone said Brendan Dassey was actively
14 bleeding. There's no cut on him such that his
15 blood would be found anywhere.

16 All right. Let's talk about
17 interrogation. First of all, let's keep in mind
18 this is a gruesome rape/murder. This isn't your
19 average retail theft, your average burglary, your
20 average anything. The interrogation conducted by
21 these officers is nothing short of exemplary,
22 skilled, talented, pointed and directed, as I
23 suggested, to appeal to his sense of guilt. They
24 heard. They knew. They had that feeling.

25 As Counsel tell you, they've got three

1 times the experience that he has years on this
2 earth. They appeal to that sense of guilt. They
3 had that hunch that he wasn't going to be able to
4 live with it, and they were right.

5 People who are innocent don't confess in
6 the detail provided to the extent this defendant
7 provided it. They don't do that. This isn't
8 your walk in off the street I -- I killed
9 JonBenet Ramsey. We're about as far away from
10 that idea -- And I'm not quite sure where
11 Dr. Gordon's coming from, but I'm sure glad he's
12 going to Missouri.

13 People who are innocent don't confess.
14 The defendant confessed because he was guilty.
15 Because he did it. An innocent person is going
16 to deny the suggestion. They're not going to
17 admit to this. Not to the degree that the
18 defendant did. Now, let's keep one other thing
19 in mind. I'll listen to that argument, it makes
20 my blood boil, because those officers treated the
21 defendant a heck of a lot better than he treated
22 Teresa Halbach.

23 Now, let's clear up this corroboration
24 issue. The defense, in their opening comments on
25 argument, suggested to you that we needed to

1 corroborate everything in his statement. That's
2 not true. That's not the law. We need -- As
3 Mr. Edelstein corrected his colleague, we need
4 only prove beyond a reasonable doubt the elements
5 of those offenses; the murder, the rape, and the
6 mutilation. We don't have to corroborate. We
7 don't have to prove every single, solitary thing.
8 We'd be here for the next six months.

9 We're required to prove to you beyond a
10 reasonable doubt the elements of the offense.
11 The facts that make him guilty. So let's look at
12 some, what I would characterize as, irrefutable
13 corroboration. And it comes in facts that are
14 either known only to the killers or facts that
15 weren't discovered until after the defendant
16 provided them.

17 How about that Teresa was shot in the
18 garage? Sure, the officer said, well, who shot
19 her? Wiegert asked -- he got tired, he got
20 inpatient, he says, well, who shot her? He said,
21 he did. Who's he? Steven. Where? In the
22 garage. Where did that come from? With what? A
23 .22 caliber. More than once in the head. And in
24 the left side of the head.

25 And that the clothes were burned. That

1 was not discussed.

2 The officers had found some rivets.
3 That's true. And they knew it had -- there was
4 at least one gunshot to the left side of the head
5 from Dr. Eisenberg's initial report. But who
6 else would know that? You don't know that unless
7 you're there. That wasn't suggested, because if
8 it was, you can bet Counsel would have shown that
9 little tape to you. Even though he doesn't want
10 to take anything out of context, I didn't see any
11 of the answers or any of the setup to any of
12 those questions that he flashed on the screen
13 so -- so interestingly.

14 How about some facts discovered after he
15 talked. That was more than one shot in the head.
16 You recall, it was later on, as Detective Wiegert
17 told you, that they learned that there was at
18 least another gunshot in the head. They didn't
19 know more than one on March 1.

20 How about the location of the bed?
21 Counsel would have you believe that because the
22 defendant's version of all -- of the placement of
23 all the furniture is somewhat different than Jodi
24 Stachowski's, that he shouldn't be believed.
25 Again, core details versus peripheral. What's

1 important. What's not. The location of the bed
2 is the critical fact. In other words, you can
3 look down that hallway and see that bed, and
4 that's the point.

5 The other critical fact is we know,
6 because when the search warrant was executed the
7 bed wasn't there. The bed was underneath the gun
8 rack, also signifying that room was cleaned and
9 moved in an effort to thwart the investigative
10 efforts, in an effort to cover up this crime.

11 In fact, as you heard Detective Wiegert
12 tell you, jeez, we didn't think that made any
13 sense. We just thought that was just one of
14 those things we couldn't explain until they went
15 and they talked to Jodi Stachowski and they said,
16 well, by the way, before you traded off to jail,
17 where was that bed? She said, under the window,
18 on the wall by the door.

19 All right. And after -- after he
20 talked, they execute a search warrant and what
21 did they find? They find the bullets. Nobody
22 knew those bullets were there. Nobody knew for
23 sure until he said they were shot -- she was shot
24 in the garage. And they go back, well, let's go
25 look for bullets. And lo and behold, they find a

1 bullet with Teresa Halbach's DNA.

2 What else did they do? They went back
3 and they said -- Counsel will say, we'll, make a
4 big deal out about how they suggested to him that
5 he went under a hood. Well, let's take their
6 argument at face value. My response is, so what?
7 They went and they swabbed the hood and, jeez,
8 guess what? Steven Avery's DNA is on that hood.

9 Let's talk about successful resistance.
10 There were many examples. Think back. Many
11 times the officers -- well, what about those
12 wires hanging in the garage? Did you guys use
13 those? Did you do anything? Did you string her
14 up? Do you use those? Nope. Nope. He never
15 bought into that. He never adopted that.

16 He said, no, there was never any blood
17 on me from Teresa. Nope. He resisted knowing
18 anything about what happened to the hair that he
19 cut off her head. They tried to get him to say,
20 well, you've got it. Steven's got it. Where is
21 it? He didn't know. He didn't adopt that
22 suggestion.

23 He didn't adopt the suggestion when the
24 officers pressed him, well, you were the one --
25 how could you see that stuff in the burn barrel?

1 How did you know that was a cell phone and all
2 that stuff if it's in a bag? How could you have
3 known that? You were the one who put it in
4 there, weren't you? He didn't adopt that
5 suggestion.

6 And when he finally admitted to the
7 rape, they went back at him again and they say,
8 well, you saw Steven rape her, too, didn't you?
9 You were there when he did it; right? And he
10 said, no. No. He didn't adopt that.

11 But you know what the most important
12 suggestion resisted here? And that's the
13 suggestion that he shot Teresa Halbach. And you
14 all know why he was asked that. Because he
15 finally did cough up the fact that he held the
16 knife and then he cut her throat. So the next
17 logical question is, well, you also shot her too;
18 right? And they went at him several times during
19 that, and not once, once the "royal you" and the
20 "individual you" were cleaned up for him so that
21 he understood, he never said that he touched or
22 shot that gun. He resisted suggestion.

23 And while Counsel has him one foot away
24 from the institution, his presentation on the
25 witness stand is far from that. I don't know

1 about you, but he seemed to resist my suggestions
2 pretty well on cross-examination. At least to
3 the extent, well, you saw body parts in the fire;
4 didn't you? No, I didn't.

5 He resisted several of my suggestions,
6 but most of them he just said, I don't know.
7 We'll come back to that in a moment.

8 Well, the defense called Dr. Gordon. I
9 don't know what more we can say about Dr. Gordon,
10 but I took a couple of things, if you want to
11 believe them at all. Here's a guy who's using
12 this test which is normed, developed on
13 Europeans. A test he just recently got himself,
14 he said, after a year of trying. So it's not
15 like he's used this test a lot either.

16 The test about Anna Thompson on holiday
17 in the south of Spain who loses 50 pounds of
18 traveler's checks. What is a kid from Mishicot,
19 Wisconsin going to relate to that? Counsel says,
20 well, it's only one sentence. Sure. It's only
21 one sentence.

22 Then Dr. Gordon uses the Wechsler
23 Abbreviated Scale of Intelligence. And as we
24 heard, the Wechsler Scale of Intelligence has 11
25 scales, but you can give somebody the short

1 version, the *Reader's Digest* version, because
2 it's got four scales on there, and to give you an
3 idea as to how he would probably test out if you
4 took the time to run the whole test; right?

5 Well, our esteemed Dr. Gordon only
6 bothered to run two scales out of a four on the
7 abbreviated test. So he's abbreviating the
8 abbreviation. No matter. And, then, he has the
9 nerve to try to mislead you by using the scoring
10 criteria for the DSM-4, the Diagnostic and
11 Statistical Manual for Mental Diseases and
12 Disorders, and apply it to the Wechsler test,
13 when the Wechsler has its own scoring criteria,
14 all in an effort to make the defendant to be less
15 intelligent than he is.

16 I could go on about Dr. Gordon. But the
17 one thing Dr. Armentrout said that really made
18 sense, two words; so what? As Gordon said on
19 cross-examination, he's -- he's more -- he's
20 suggestible to telling a confession. Could be
21 telling the truth. Could be telling -- I can't
22 say. I don't know. So what?

23 All right. We come now to the
24 defendant. Counsel talked about the presumption
25 of innocence and the reasonable doubt. The

1 defendant takes the stand, says, I didn't do it.
2 I made it all up. Believe me.

3 And when I asked why -- repeatedly asked
4 why did you do this? Why did you do that? He
5 said, I don't know. He must have said, "I don't
6 know" 30 times, which, interestingly enough, is
7 about how many times the officers told him to
8 tell the truth during that interview.

9 While a defendant is presumed innocent,
10 he is not presumed believable. He is not
11 presumed credible. When he gets there and he
12 tells you, I don't know. I didn't do it. I made
13 it all up.

14 I want to play for you one brief clip,
15 and ask yourself, do people confess to rape, to
16 murder, and mutilation if they didn't do it, and
17 then apologize for it?

18 (Wherein portion of March 1 videotape is played)

19 There's your motive as sad as it is.
20 Just as Teresa's lifeless body was consumed by
21 that fire on Halloween night, the defendant's
22 presumption of innocence has been consumed by the
23 fires of his own desire. He wanted to know what
24 it was like. His presumption of innocence has
25 been destroyed by the fires of his own guilt.

1 There's only one verdict here for each
2 count, and that's a verdict of guilty. And we
3 ask you to bring that verdict. We ask you to
4 bring justice for Teresa. Thank you.

5 THE COURT: Uh, ladies and gentlemen, I'm
6 going to read you a closing instruction and several
7 others.

8 Now, members of the jury, the duties of
9 counsel and the Court have been performed. The
10 case has been argued by counsel. The Court has
11 instructed you regarding the rules of law which
12 should govern you in your deliberations. The
13 time has now come when the great burden of
14 reaching a just, fair and conscientious decision
15 of this case is to be thrown wholly upon you, the
16 jurors, selected for this important duty.

17 You will not be swayed by sympathy,
18 prejudice or passion. You will be very careful
19 and deliberate in weighing the evidence. I
20 charge you to keep your duty steadfastly in mind
21 and, as upright citizens, to render a just and
22 true verdict.

23 The following forms of verdict will be
24 submitted to you concerning the charges against
25 the defendant, Brendan Dassey.

1 We, the jury, find the defendant,
2 Brendan R. Dassey, guilty of first degree
3 intentional homicide, as a party to a crime, on
4 October 31, 2005, contrary to Sections 940.01
5 (1)(a), 939.50 (3)(a), 939.05 Wisconsin Statutes.

6 We, the jury, find the defendant,
7 Brendan R. Dassey, not guilty of first degree
8 intentional homicide, as a party to a crime, on
9 October 31, 2005, contrary to Sections 940.01
10 (1)(a), 939 -- excuse me -- uh, 50 point -- uh,
11 (3)(a), 939.05, Wisconsin Statutes.

12 We, the jury, find the defendant,
13 Brendan R. Dassey, guilty of mutilating a corpse,
14 as a party to a crime, on October 31, 2005,
15 contrary to Sections 940.11 (1), 939.50 (3)(f),
16 939.05 Wisconsin Statutes.

17 We, the jury, find the defendant,
18 Brendan R. Dassey, not guilty of mutilating a
19 corpse, as a party to a crime, on October 31,
20 2005, contrary to Sections 940.11 (1), 939.50
21 (3)(f), 939.05 Wisconsin Statutes.

22 We, the jury, find the defendant,
23 Brendan R. Dassey, guilty of second degree sexual
24 assault, as a party to a crime, on October 31,
25 2005, contrary to Sections 940.225 (2)(a), 939.50

1 (3)(c), 939.05 Wisconsin Statutes.

2 We, the jury, find the defendant,
3 Brenden R. Dassey, not guilty of second degree
4 sexual assault, as a party to a crime, on
5 October 31, 2005, contrary to Sections 940.225
6 (2)(a), 939.50 (3)(c), 939.05 Wisconsin Statutes.

7 We, the jury, find the defendant,
8 Brendan R. Dassey, guilty of first degree
9 reckless homicide, as a party to a crime, a
10 lesser included offense, on October 31, 2005,
11 contrary to Sections 940.02 (1) and 939.05
12 Wisconsin Statutes.

13 We, the jury, find the defendant,
14 Brendan R. Dassey, not guilty of first degree
15 reckless homicide, as a party to a crime, a
16 lesser included offense, on October 31, 2005,
17 contrary to Sections 940.02 (1) and 939.05
18 Wisconsin Statutes.

19 It is for you to determine whether the
20 defendant is guilty or not guilty of each of the
21 offenses charged. You must make a finding as to
22 each count of the Information. Each count
23 charges a separate crime and you must consider
24 each one separately. Your verdict for the crime
25 charged in one count must not affect your verdict

1 on any other count.

2 This is a criminal, not a civil, case.
3 Therefore, before the jury may return a verdict
4 which may be -- legally be received, the verdict
5 must be reached unanimously. In a criminal case,
6 all 12 jurors must agree in order to arrive at a
7 verdict.

8 When you retire to the jury room, select
9 one of your members to preside over your
10 deliberation. That per -- that person's vote is
11 entitled to no greater weight than the vote of
12 any other juror.

13 When you have agreed upon your verdict,
14 have it signed and dated by the person you have
15 selected to preside.

16 Before we swear the jury officer, I'm
17 going to, uh, ask the clerk to draw three names
18 from the tumbler. The first two of those names
19 will be jurors who are discharged. The third
20 will be a juror who will remain sequestered.

21 As to the discharged jurors, I'm going
22 to order the following:

23 That you are not to discuss the matter
24 with the media or anyone else until a verdict has
25 been received by this Court.

1 Uh, once the verdict is received, you
2 may, but are under no obligation to, discuss your
3 participation in the case with the media or
4 anyone you choose to discuss it with.

5 Madam clerk.

6 ATTORNEY FREMGEN: Judge, one thing, I --

7 THE COURT: Oh --

8 ATTORNEY FREMGEN: Are we -- are we
9 going to keep the name --

10 THE COURT: I -- I -- thank you for
11 reminding me. I'm going to ask at this point
12 that -- that any audio be muted so that any name is
13 not a -- a matter of public broadcast. Thank you.

14 THE CLERK: The first one is No. 11, Renee
15 Schmidt.

16 THE COURT: All right. Remain there
17 just a second, Ms. Schmidt -- Schmidt.

18 THE CLERK: Second one is No. 10,
19 Cynthia Edge.

20 THE COURT: All right. Ms. Edge and Ms.
21 Schmidt, uh, stay there just for a moment, but you
22 will be the -- the jurors who are -- are discharged.
23 Draw the third name, please.

24 THE CLERK: Third one is No. 1, Thomas
25 Oakes.

1 THE COURT: All right. The three of you
2 would exit the jury box, please, and join the
3 officer here. He will -- he will, uh, escort you
4 out. All right.

5 Would you swear the jury officer,
6 please?

7 (Wherein bailiff is sworn)

8 THE COURT: Madam Bailiff, here are the
9 original verdict form and 12 forms for the jurors to
10 review.

11 (Jury out at 4:26 p.m.)

12 THE COURT: Be seated. The Court is going
13 to adjourn during the deliberations. Uh, of course,
14 we may have to return in the event questions are
15 asked. Uh, the Court will provide a -- an hours
16 notice, uh, to the, uh, people who request it, uh,
17 after the return of the verdict, before the verdict
18 is announced, which may or may not be tonight. All
19 right? We're adjourned.

20 (Recess had at 4:27 p.m.)

21 (Reconvened at 10:10 p.m. Jury in)

22 THE COURT: This is State of Wisconsin vs.
23 Brendan Dassey 06 CF 88. Uh, appearances, please.

24 ATTORNEY KRATZ: The State continues in
25 its appearance by Special Prosecutors Ken Kratz,

1 Norm Gahn and Tom Fallon.

2 ATTORNEY FREMGEN: Attorney Mark Fremgen
3 appears with Attorney Ray Edelstein. Defendant
4 appears in person.

5 THE COURT: We're here now to receive the
6 verdicts from this jury. Before the Court receives
7 and reads the verdicts, I want to remind all those
8 present that this is a court of law. The Court
9 recognizes the emotional nature of this case and its
10 importance to all parties involved. However, vocal
11 outbursts or displays of emotion will not be
12 tolerated. Any violation will result in removal
13 from the courtroom.

14 Uh, ladies and gentlemen, have you
15 chosen a foreperson?

16 JUROR: Yes.

17 THE COURT: I ask that the foreperson hand
18 to the jury bailiff these verdicts.

19 As to Count 1, we, the jury, find the
20 defendant, Brendan R. Dassey, guilty of first
21 degree intentional homicide, as party to a crime,
22 on October 31, 2005, contrary to Sections 940.01
23 (1)(a), 939.50 (3)(a), 939.05 Wisconsin Statutes.
24 Dated this 25th day of April, 2007, and signed by
25 the foreperson.

1 As to Count 2, we, the jury, find the
2 defendant, Brendan R. Dassey, guilty of
3 mutilating a corpse, as party to a crime, on
4 October 31, 2005, contrary to Sections 940.11
5 (1), 939.50 (3)(f), 939.05 Wisconsin statutes.
6 Dated this 25th day of April, 2007, and signed by
7 the foreperson of the jury.

8 As to Count 3, we, the jury, find the
9 defendant, Brendan R. Dassey, guilty of second
10 degree sexual assault, as party to a crime, on
11 October 31, 2005, contrary to Sections 940.225
12 (2)(a), 939.50 (3)(c), 939.05 Wisconsin Statutes.
13 Dated this 25th day of April, 2007.

14 I'm going to poll the jury at this
15 juncture. I ask that, uh, any audio that is
16 currently being run in the courtroom be muted or
17 turned off.

18 And I'm going to start, uh, in chair No.
19 2, and ask, uh, Mr. Hughes, were these your
20 verdicts as read -- read by the Court and are
21 these still now your verdicts in this case?

22 JUROR HUGHES: Yes.

23 THE COURT: Ms. Tedder, were these your
24 verdicts as read -- read by the Court and are
25 they still now your verdicts in this case?

1 JUROR TEDDER: Yes.

2 THE COURT: Ms. Shea, were these your
3 verdicts as read by the Court and are they now still
4 your verdicts in this case?

5 JUROR SHEA: Yes.

6 THE COURT: Ms. Durst, uh, were these your
7 verdicts as read by the Court and are they still now
8 your verdicts in this case?

9 JUROR DURST: Yes.

10 THE COURT: Mr. Heinzl, were these your
11 verdicts as read by Court and are they still now
12 your verdicts in this case?

13 JUROR HEINZEL: Yes.

14 THE COURT: Ms. Foss, were these your
15 verdicts as read by the Court and are they now still
16 your verdicts in this case?

17 JUROR FOSS: Yes.

18 THE COURT: I'll go to the front row.
19 Mr. Covington, were these your verdicts as read
20 by the Court and are they now still your verdicts
21 in this case?

22 JUROR COVINGTON: Yes.

23 THE COURT: Ms. Running, were these your
24 verdicts as read by the Court and are they now still
25 your verdicts in this case?

1 JUROR RUNNING: Yes.

2 THE COURT: Ms. Orth, were these your
3 verdicts as read by the Court and are they still now
4 your verdicts in this case?

5 JUROR ORTH: Yes.

6 THE COURT: Ms. McGuire, were these your
7 verdicts as read by the Court and are they still now
8 your verdicts in this case?

9 JUROR MCGUIRE: Yes.

10 THE COURT: Ms. Lowery, were these your
11 verdicts as read by the Court and are they still now
12 your verdicts in this case?

13 JUROR LOWERY: Yes.

14 THE COURT: I'm sorry?

15 JUROR LOWERY: Yes.

16 THE COURT: All right. Ms. Shippy, were
17 these your verdicts as read by the Court and are
18 they still now your verdicts in this case?

19 JUROR SHIPPY: Yes.

20 THE COURT: The polling has, uh, been
21 com -- completed. Members of the jury, uh, on
22 behalf of Manitowoc County, I would like to express
23 my sincerest gratitude and appreciation for your
24 service in this case. I recognize, particularly in
25 this case, that personal sacrifice in terms of time

1 and restrictions on your normal activities have been
2 required by this trial. That sacrifice is a
3 necessary part of the price we pay for the judicial
4 system every citizen enjoys. You, as jurors, act as
5 the collective conscience of the community in making
6 these decisions. Again, I thank you.

7 Before discharging you, I have one final
8 instruction.

9 Now, that your service in this case is
10 completed, some of you may have questions about
11 the confidentiality of the proceedings. Many
12 jurors ask if they are at liberty to discuss the
13 case with anyone after receiving the verdicts.
14 Because your role in the case is over, you are
15 free to discuss it with any person you choose.
16 However, you should know that you do not have to
17 discuss the case with anyone or answer any
18 questions about it from anyone other than the
19 Court.

20 If you do decide to discuss the case
21 with anyone, I would suggest you treat any
22 discussion with a degree of solemnity such that
23 whatever you do say, you would be willing to say
24 in the presence of your fellow jurors or under
25 oath here in open court in the presence of the

1 parties. Also, always keep in mind if you do
2 decide to discuss the case, that your fellow
3 jurors fully and freely stated their opinions
4 with the understanding they were being expressed
5 in confidence. Please respect the privacy of the
6 views of your fellow jurors.

7 If any member or members of the jury
8 wish to discuss the case this evening with
9 representatives of the media, arrange --
10 arrangements can be made to permit you to do so
11 before you leave. Uh, if you wish to do so, let
12 the bailiff know that that is your desire.

13 Should anyone, whether from the media or
14 otherwise, persist in attempting to question you
15 over your objection, you should contact this
16 Court.

17 Finally, should any of you have any
18 questions for the Court before leaving this
19 evening, please let the bailiff know before you
20 leave the jury room.

21 Again, thank you. You are now excused
22 and discharged.

23 (Jury excused at 10:17 p.m.)

24 THE COURT: Mr. Kratz, I see the microphone
25 in front of you. Do you have a motion?

1 ATTORNEY KRATZ: I do, Judge. I'd ask
2 that the Court enter judgment on the verdicts.

3 THE COURT: The Court will, based on these
4 verdicts, enter judgment of guilty, uh, as reflected
5 in the verdicts of this jury.

6 Uh, are we prepared at this point to set
7 a sentencing date?

8 ATTORNEY KRATZ: Uh, we can certainly
9 set the date, Judge. There are two requests that
10 I would make. First, I would ask the Court, uh,
11 order a, uh, presentence, uh, investigative
12 report. I'm sure, uh, that, uh, will be done as
13 a matter of course.

14 Secondly, given the nature of the, uh,
15 convictions, uh, and although, uh, the bond and
16 bail that has been set in this case, uh, is,
17 uh -- is rather high, uh, given the mandatory
18 sentence, uh, that is, uh, necessary and
19 imperative in this case, uh, I would ask that the
20 Court, uh, revoke bail at this time.

21 THE COURT: Defense wish to be heard?

22 ATTORNEY FREMGEN: No, Judge.

23 THE COURT: All right. The -- the Court
24 will, for the -- the reasons stated by the
25 prosecutor, revoke the bail in this case. Court

1 will order that a presentence investigation be
2 completed by July 9, 2007. I would like to set
3 sentencing for July 17, 2007, and this assumes that
4 your calendars are open on that day.

5 ATTORNEY FREMGEN: Judge, I have a
6 two-day trial Monday and Tuesday of that week.

7 THE COURT: Your calendar's not open.

8 ATTORNEY FREMGEN: It is not open.

9 THE COURT: All right.

10 ATTORNEY KRATZ: Perhaps the week before
11 that, Judge. I know at the end of July I have a,
12 um -- a week-long arson trial. But if the Court
13 could set it, perhaps -- uh, maybe move up the,
14 uh -- the PSI and set it for the second week of
15 July.

16 THE COURT: Uh, the difficulty is in moving
17 up the PSI.

18 ATTORNEY KRATZ: I understand.

19 THE COURT: I -- I -- I'm sort of
20 cutting it close on that one in the first
21 instance. I could certainly set, uh -- set it
22 either later on in July toward the absolute end
23 or the beginning of August if that's --

24 ATTORNEY KRATZ: The first couple of
25 days of August would be just fine, Judge.

1 THE COURT: How about Monday, August 6?
2 ATTORNEY FREMGEN: That's fine.
3 THE COURT: Nine o'clock a.m.?
4 ATTORNEY FREMGEN: That's fine.
5 ATTORNEY KRATZ: August 6 at 9?
6 THE COURT: Yeah.
7 ATTORNEY KRATZ: That will work out
8 fine. Thank you, Judge.
9 THE CLERK: Do you still want the PSI to be
10 done by July --
11 THE COURT: Actually, we can move the
12 PSI, uh, to the --
13 ATTORNEY KRATZ: Sixteenth maybe?
14 That's a week later.
15 THE COURT: Yeah. The 16th, uh, is a
16 Saturday, so -- Well, that's June. Excuse me. Uh,
17 yeah, 16th is a Monday. That's fine. PSI will be
18 due then on the 16th.
19 THE CLERK: Do you want an order drafted
20 on the bail revocation?
21 THE COURT: The State will draft the order
22 on the bail modification.
23 ATTORNEY KRATZ: I will, Judge.
24 THE COURT: Sentencing, 9:00, uh, August 6.
25 Anything more to come before the Court this evening?

1 ATTORNEY KRATZ: Not today, Judge, thank
2 you.
3 ATTORNEY FREMGEN: No, Judge.
4 THE COURT: Good evening, then.
5 (Court stands adjourned at 10:20 p.m.)
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1 STATE OF WISCONSIN)
) SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 11th day of December, 2007.
16
17

18 Jennifer K. Hau
19 Jennifer K. Hau, RPR
20 Official Court Reporter
21
22
23
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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

SENTENCING HEARING

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: AUGUST 2, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

THOMAS 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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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

1 THE COURT: Good morning. This is the
2 State of Wisconsin vs. Brendan Dassey, Case No.
3 06 CF 88. Appearances, please.

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 Assistant Attorney General Tom Fallon, Assistant
7 District Attorney Norm Gahn, all appearing as
8 special prosecutors.

9 ATTORNEY FREMGEN: The defendant appears
10 in person with Attorneys Mark Fremgen and Raymond
11 Edelstein.

12 THE COURT: On April, 25, 2007 following
13 approximately nine days of trial, a jury returned a
14 verdict finding Brendan Dassey, this defendant,
15 guilty of first degree intentional homicide as party
16 to the crime, mutilating a corpse as party to the
17 crime, and second degree sexual assault as party to
18 the crime.

19 The charges for which he was convicted
20 stem from the sexual assault and murder of Teresa
21 Halbach on or about October 31, 2005 at property
22 occupied, among others, by Steven Avery, the
23 defendant's uncle, who has also been convicted of
24 first degree intentional homicide.

25 After the judgment of conviction was

1 entered, the Court ordered a presentence report.
2 Uh, addressing myself first to you, Mr. Kratz,
3 have you received it?

4 ATTORNEY KRATZ: Yes, Judge, as well
5 as --

6 THE COURT: The addendum?

7 ATTORNEY KRATZ: -- the addendum.

8 THE COURT: Any corrections -- factual
9 corrections that you wish to make?

10 ATTORNEY KRATZ: There are some slight,
11 uh, differences, Judge, to the statement of facts
12 as set forth in the, um, presentence. Uh, they
13 are not, however, significant enough for, uh, me
14 to, uh, enumerate at this time. Uh, and other
15 than that, Judge, the presentence appears
16 accurate and I have nothing by way of correction.

17 THE COURT: Mr. Fremgen, have you
18 received it?

19 ATTORNEY FREMGEN: I did receive both as
20 well. I had an opportunity to speak with my
21 client and read him both the presentence, the
22 attached letters, as well as the addendum and
23 attached letters. Um, we have no factual
24 corrections to make to either.

25 THE COURT: All right. Mr. Kratz, has the,

1 uh, prosecution complied with 971.095 (2) relating
2 to notification of victim's family?

3 ATTORNEY KRATZ: We have, Judge. And I
4 should also tell the Court that all other
5 provisions of Chapter 950 have also been complied
6 with.

7 THE COURT: All right. Um, starting,
8 again, with you, Mr. Kratz, are -- are you going to
9 be offering, on behalf of the State, any statements
10 from -- from, uh, the family or others?

11 ATTORNEY KRATZ: As the Court knows, uh,
12 Your Honor, several, uh, family, uh, and friends
13 of the deceased victim took the opportunity to
14 provide written statements both for the
15 presentence writer's consideration as well as the
16 Court.

17 There are three individuals, however,
18 today, that wish to take advantage of the
19 provision to give an oral, uh, impact statement.
20 That would be, uh, Teresa's, uh, aunt, uh, as
21 well as, uh, two brothers. Uh, again, intending
22 to give brief oral impact statements, and when
23 the Court is prepared to receive those, they are
24 prepared to give them.

25 THE COURT: Thank you. Uh, Mr. Fremgen,

1 anyone going to be giving statements on behalf of
2 the defendant?

3 ATTORNEY FREMGEN: Judge, two
4 individuals wish to make brief statements to the
5 Court. Um, Barb, uh, Tadych, my client's mother,
6 although she also provided a letter to the
7 presentence writer, and Brad Dassey is my
8 client's half brother.

9 THE COURT: All right. I'll note for the
10 record we had a brief conversation in chambers prior
11 to coming out here. Uh, part of the subject of that
12 conversation was not only the statements about which
13 we -- we, uh, had some discussion, but the fact that
14 the right of allocution, that is, the right of the
15 defendant to offer a statement on his own behalf,
16 uh, will, if he wants to exercise it, be exercised
17 following the statements that we have just now
18 discussed. Is -- is that correct, first of all,
19 Mr. Kratz?

20 ATTORNEY KRATZ: Yes.

21 THE COURT: Mr. Fremgen?

22 ATTORNEY FREMGEN: That's correct.

23 THE COURT: All right. You may proceed,
24 Mr. Kratz.

25 ATTORNEY KRATZ: Thank you, Judge. We call

1 forward, uh, Kay Giordana.

2 MS. GIORDANA: Judge Fox, my name is Kay
3 Giordana. Teresa was my niece, my godchild.
4 Brendan Dassey was given a choice. He could have
5 been a national hero or a murderer, and he
6 decided to be a murderer.

7 When we were looking for Teresa, he knew
8 where she was and he did nothing. He knew of
9 Steven Avery's plan to murder Teresa and he did
10 nothing to prevent it. He is a coward and a
11 disgrace. Brendan Dassey had a choice and Teresa
12 did not. He killed her with no remorse. He
13 deserves only life in prison without parole.

14 Brendan Dassey has shown us he has no
15 respect for life. Please hold him accountable
16 for his actions. His participation in Teresa's
17 death has caused extreme emotional and mental
18 suffering in our family. Please keep him in
19 prison for the rest of his life. Thank you.

20 THE COURT: All right.

21 MR. MIKE HALBACH: Good morning, Judge
22 Fox, my name is Mike Halbach.

23 THE COURT: I was going to ask you to
24 identify yourself for the record.

25 MR. MIKE HALBACH: My name is Mike

1 Halbach and I'm Teresa's younger brother. On
2 October 31, 2005, Brendan Dassey had the
3 opportunity to choose a lifelong title for
4 himself; rapist and murderer, or hero. It's such
5 an easy decision that the fact that any person,
6 young or old, who can choose the former has to be
7 held accountable.

8 Judge Fox, here's a young man who, in
9 late February of 2006, I thought -- I thought
10 maybe deserved some credit for coming forward
11 with information he had regarding my sister's
12 death, both confirming Steven Avery's
13 involvement, as well as imp -- implicating
14 himself. I thought maybe he felt sorry and
15 ashamed for what he had done. I thought, well,
16 he still must be held accountable, maybe to a
17 lesser degree.

18 Just a few months later, however, he
19 recanted his confession. He has consistently
20 refused plea deals which would have made our
21 lives easier amiss -- amidst this tragedy, and to
22 his benefit would have made a sentence shorter
23 for doing so.

24 He has made these choices seemingly with
25 the hope of not having to hold himself

1 accountable for what he did to my sister.

2 Judge Fox, I would not have asked you to
3 send a hero to prison, but I will -- but I will
4 ask you to send this rapist and murderer to
5 prison for the rest of his life without ever
6 becoming eligible for parole. Thank you.

7 MR. TIM HALBACH: I'm Tim Halbach,
8 Teresa's older brother. Judge Fox, I'm here
9 today to res -- respectfully request that this
10 Court send Brendan Dassey to prison for the rest
11 of his life without ever -- ever having the
12 possibility of extended supervision or parole.

13 He raped and killed my sister, and he
14 mutilated her body. And for that alone, he
15 deserves to spend the rest of his life in prison.

16 Now, I understand, Judge, that you have
17 the power to set a date that Brendan Dassey is
18 eligible with the possibility of extended
19 supervision, and the minimum date that you could
20 set is 20 years, which is essentially the
21 minimum -- minimum sentence that Brendan Dassey
22 could receive. However, I see no reason that
23 this Court should grant Brendan Das -- Brendan
24 Dassey any such leniency.

25 Over the last 21 -- 21 months, he has

1 not apologized for his actions, nor has he shown
2 any remorse, nor did he, in any way, assist the
3 prosecution team or the police in the prosecution
4 of his uncle, Steven Avery. In short, Brendan
5 Dassey has done nothing to warrant the minimum
6 sentence.

7 One of the reasons that our society has
8 a Criminal Justice System is to deter others from
9 commit -- committing similar crimes. What kind
10 of deterrent is -- is it if we give Brendan
11 Dassey the minimum sentence when he raped and
12 murdered a complete stranger, and mutilated her
13 body, and did nothing to earn any leniency from
14 this Court?

15 For these reasons, I am asking this
16 Court impose the maximum sentence, which is to
17 send Brendan Dassey to prison for the rest of his
18 life without ever having the possibility of
19 extended supervision. Thank you.

20 ATTORNEY FREMGEN: Judge --

21 THE COURT: Mr. Fremgen.

22 ATTORNEY FREMGEN: -- I believe Barb
23 Tadych would like to speak on behalf of Brendan.

24 THE COURT: Ms. Tadych? Please identify
25 yourself for the record.

1 MS. TADYCH: My name's Barbara Tadych.
2 And all I got to say is my son did not do this.
3 He was more or less coerced in saying what he
4 said, and I believe that he should be -- maybe
5 get a little bit for saying a story, but I don't
6 think he ought to deserve life.

7 THE COURT: Anything else?

8 MS. TADYCH: Just that he's innocent.

9 ATTORNEY FREMGEN: Uh, Judge, Brad
10 Dassey, who is Brendan's half brother, would also
11 like to provide a statement.

12 THE COURT: Mr. Dassey?

13 MR. BRAD DASSEY: Good morning. I'm
14 Brad Dassey, Brendan's half brother. All I have
15 to say is, uh, only God knows what happened.
16 And, uh, I feel for the Halbach family as well.
17 Nobody deserves to die and be killed, but I just
18 pray that, uh, everybody can find some kind of
19 peace in their life.

20 I believe that my brother does not
21 deserve life. I believe that he deserves some
22 kind of sentence but not life in prison. He's a
23 young child for -- for God's sake, and I just
24 pray that, uh, you go easy on him, Judge Fox.

25 The brother that I know is a fun-loving

1 brother who would never really do anything to
2 hurt anybody. From the time I spent with him,
3 Christmas, and Thanksgiving, and whatnot, he was
4 a caring brother. If he did, indeed, help Steven
5 Avery, he was forced by Steven.

6 I think today's society ought to be
7 changed. I think a lot has to influence with the
8 media and what today's society with violence,
9 drugs, killings, sex, and I think that this world
10 can be changed for the better.

11 I just pray that you go easy on him,
12 Judge Fox, and that if you do give him life, you
13 have eligibility for parole. Thank you.

14 THE COURT: All right.

15 ATTORNEY FREMGEN: Judge, um, we have no
16 additional testimonials or statements. I just, uh,
17 briefly spoke with Brendan. He does understand his
18 right to make a statement, his right to allocution.
19 He does not wish to exercise that.

20 THE COURT: Well, why don't you put the
21 microphone in front of him. Mr. Dassey, you
22 understand that before sentencing you have a right
23 to tell this Court about any factor that you think
24 relates to sentencing? You understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: You don't have to say anything
2 if you don't want to. Do you understand that as
3 well?

4 THE DEFENDANT: Yes.

5 THE COURT: But if you have something to
6 say, something that you think might help me,
7 something -- some factor that you -- you'd like the
8 Court to con -- consider, you can do that now. Do
9 you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you want to do that now?
12 Do you want to say anything?

13 THE DEFENDANT: I don't know what to say.

14 THE COURT: Well, it's up to you. As I
15 said, you don't have to say anything if you don't
16 wish. But if you've got something you'd like to
17 tell the Court, like to tell the people assembled
18 here, now is your time to say it.

19 THE DEFENDANT: Just that I didn't do it
20 and I couldn't do nothing like that.

21 THE COURT: Anything else?

22 THE DEFENDANT: No.

23 THE COURT: All right. Any further
24 statements, Mr. Fremgen?

25 ATTORNEY FREMGEN: Uh, no, Judge, not,

1 uh, testimonial statements.

2 THE COURT: All right. Court's going to
3 note, uh, that in addition to the testimonial
4 statements it's -- it's heard here today, as I
5 believe the district attorney mentioned, a number of
6 statements were appended to the presentence
7 investigation. Statements, uh, some in letter form,
8 some -- some simply in statement form.

9 I'm going to enumerate, uh, the authors
10 of those statements just for this record. Um,
11 the Court read them and considered them. They
12 were from Brendan Dassey, this defendant; Barbara
13 Tadych, his mother; Pete Dassey, his father;
14 Blaine Dassey, his brother; Carla Chase, Brendan
15 Dassey's cousin; Mike Kornely, someone who knew
16 Brendan and his brother, Brain -- Blaine, and
17 briefly employed Brendan; Tom and Karen Halbach,
18 Teresa Halbach's parents; Timothy Halbach,
19 Teresa's brother; Gina Lemberger and family.
20 Apparently, Ms. Lemberger is a cousin and friend
21 of, uh, Teresa Halbach. Kay Giordana, aunt and
22 godmother of Teresa Halbach; Mike Halbach,
23 Teresa's brother; Maria Halbach; and, uh, lastly,
24 Trinity Rosenow, who is a -- was a close friend
25 of Teresa's.

1 Uh, Mr. Kratz, are you prepared to
2 proceed?

3 ATTORNEY KRATZ: Yes, Judge.

4 THE COURT: Go ahead.

5 ATTORNEY KRATZ: Thank you, Your Honor.

6 The three primary factors this Court need to
7 consider in, uh, this, as well as any sentencing,
8 are the character of the offender, the seriousness
9 of the offense, and the need to protect the public.
10 I intend to briefly address each of those factors as
11 I'm sure the Court, uh, will be considering those.

12 First, the character of Mr. Dassey.
13 Although it's true he has no prior criminal
14 record and may, in fact, have been, uh, coaxed
15 into or seduced, even, uh, into being involved in
16 this crime by his uncle, uh, Steven Avery, uh,
17 Mr. Dassey's dangerousness, I think, uh, is
18 something that needs to be, uh, considered.

19 Clearly, as many of the written and oral
20 statements noted, Mr. Dassey had some choices to
21 make on the 31st of October in 2005. Uh, a
22 choice to either assist, uh, and, in fact, save
23 the life of Teresa Halbach, or a choice to be
24 involved in rape, torture, murder, and
25 mutilation. Mr. Dassey made a series of

1 incredibly, uh, poor choices, and that brings us,
2 certainly, uh, here today.

3 Uh, when looking at Mr. Dassey's
4 behavior thereafter, uh, for four months
5 Mr. Dassey maintained silence, did not assist the
6 investigation or the prosecution at all. Uh,
7 although, eventually, did give an incriminating
8 statement, incriminating not just for himself but
9 against, uh, his Uncle Steven, and, uh, although
10 recanting, uh, very shortly thereafter,
11 Mr. Dassey originally deserved, and probably
12 today, uh, deserves some modicum of credit, uh,
13 for that involvement or that benefit to the
14 investigation and to the prosecution.

15 But thereafter, Mr. Dassey has done
16 nothing to ensure justice for the murder of
17 Teresa Halbach, and nor for the Halbach, uh,
18 family. Uh, even today, or at least in giving
19 his statement to the presentence writer, he
20 chooses to blame law enforcement officers for,
21 uh, his, what he calls "involvement", uh, in this
22 case. What he means by that statement is, uh, he
23 blames law enforcement for actually asking him
24 questions which led to his admissions, and, uh,
25 it is a -- I think, a classic, uh, statement of

1 what used to be called, uh, "criminal thinking."
2 Uh, that is, blaming law enforcement for getting
3 caught rather than taking responsibility for
4 one's actions.

5 That brings us to the two more important
6 factors to be considered by this Court. The
7 seriousness of the offense and the need to
8 protect the public. Uh, this case, and the
9 seriousness of it, cannot be overstated. The
10 behavior, itself, the rape, the, um, torture,
11 emotional and physical, uh, the murder, itself,
12 and the mutilation and hiding of the evidence is,
13 uh, something rarely seen, uh, in, uh, the United
14 States, frankly, and, certainly, uh, not in,
15 uh -- in this area, uh, thankfully.

16 Uh, but Mr. Dassey, from the beginning
17 of this case, made some choices, as I mentioned,
18 and his behavior, uh, that is, his involvement in
19 each one of those facets of this crime, um, needs
20 to be considered.

21 We have three crimes for which
22 Mr. Dassey has been convicted, uh, not just the
23 homicide, as though the, uh, mutilation and the
24 rape, uh, need to be considered by this Court as
25 aggravating factor.

1 Uh, as a -- a judge, you understand your
2 obligation to this community, to society, if you
3 will, to hold individuals accountable for
4 behavior, and when the series of crimes are this,
5 um, heinous, uh, it requires consequences that
6 are commensurate with that behavior.

7 As I think it was Mike Halbach's oral
8 statement today, he indicated this isn't a
9 minimum sentence case. Nowhere near the minimum,
10 uh, is, uh, appropriate for all of these
11 aggravating factors, and all, uh, of the, uh,
12 horrific aspects of this case. So I'd urge the
13 Court to at least, uh, reject, uh, anything close
14 to the minimum.

15 The presentence discusses, uh, parole
16 eligibility, or what is now called extended
17 supervision, indicating that should be longer,
18 uh, in the future. Certainly nothing close to
19 the minimum, uh, of, uh -- of 20 years that, uh,
20 might be available, and I'd certainly ask the
21 Court to adopt that philosophy as well.

22 Lastly, Judge, the protection of the
23 public. Um, my primary role -- at least I
24 believe my primary role in this case as a
25 prosecutor, hinges on this particular aspect of

1 sentencing. Uh, protection of the public is
2 another way of saying, uh, why should this
3 community, Manitowoc, or whatever community
4 Brendan Dassey may be released to, uh, be
5 subjected, uh, to this risk? Why take a chance
6 in the future on somebody like Brendan Dassey?
7 Our obligation, both the Court, and, I believe,
8 my obligation as a prosecutor, is to try to
9 extrapolate Mr. Dassey's choices or his behavior,
10 uh, into the future, and I can't help but think
11 that there is nothing. There is no evidence that
12 would suggest that Mr. Dassey will be making or
13 is prepared to make any better choices in the
14 future.

15 Uh, his attitude, I think, clearly
16 places the community at risk, or will place the
17 community at risk upon his, uh, release, and,
18 again, as the prosecutor, at least, that's not
19 something I'm willing to subject the people of
20 Manitowoc County to. His indifference that he
21 has shown, uh, since the investigation,
22 throughout this trial, uh, even, uh, today at the
23 time of sentencing, uh, I think is nothing short
24 of chilling. Uh, it is, uh, something that this
25 Court should consider.

1 His demeanor on the witness stand.
2 Again, his distain for law enforcement, for any,
3 uh, authority, uh, figure. His, uh, stating,
4 almost with pride, that, like the rest of the
5 Averys, he hates law enforcement, and it seems
6 that, uh, everything that, uh -- that they stand
7 for.

8 And so the protection of the public,
9 Judge, I think requires, uh, an extremely lengthy
10 sentence. It would be easy, uh, for me to
11 recommend life without the possibility of
12 extended supervision, and, in all candor, that is
13 something that this Court, uh, may, in fact,
14 choose, and something that we, originally, as the
15 prosecution team, believed was appropriate
16 because we, uh, searched long and hard for
17 something. Something that was mitigating in this
18 particular case, uh, for, uh, Mr. Dassey, and but
19 for his age, uh, which is, uh, nothing, uh, that
20 he has done by way of behavior, uh, we really,
21 uh, couldn't find any.

22 However, uh, we did finally decide that
23 he had to be treated at least somewhat
24 differently than his uncle, Steven Avery. That
25 is, that we honestly, and, again, with candor,

1 believed that Brendan Dassey would not have
2 involved himself in this series of behavior
3 without the urging, without the involvement of
4 Steven Avery.

5 And although that perhaps doesn't
6 diminish his responsibility, that is, doesn't
7 diminish the accountability for Brendan, we do
8 believe that, as the presentence writer says,
9 there should be some light at the end of the
10 tunnel for Brendan. Uh, something that, uh,
11 suggests that, uh, Brendan be eligible at some
12 point, again, no assurance of parole eligibility,
13 but, uh, at least the possibility.

14 And so, uh, many of the written
15 statements call for the mandatory life sentence,
16 which I think is appropriate, uh, but on the
17 homicide case, Judge, it is the respectful
18 recommendation of the State of Wisconsin that
19 Brendan Dassey be eligible for extended
20 supervision in 50 years. That is 5-0.

21 Uh, since 20 years is the minimum time
22 that is, uh, allowable by statute, uh, that is,
23 uh, subsection (3) of the applicable 973.014,
24 subsection, uh, (1g), um, we think that this
25 Court setting a date certain of 50 years from the

1 time of the commission of the crime. Again,
2 allowing credit for the time that Brendan, uh,
3 has been incarcerated since this case began, uh,
4 does take all of those factors into
5 consideration; the character of -- excuse me --
6 of Brendan, his lack of prior record, the
7 punishment, and most importantly, the protection
8 of the public. I would once again urge the Court
9 consider those two other convictions as well.

10 The, uh, presentence writer believes
11 that concurrent, uh, imprisonment, uh, is
12 appropriate for the sexual assault and for the,
13 uh, mutilation charge. If the Court adopts our
14 recommendation, that is, uh, mandatory life
15 imprisonment with 50 years eligibility for
16 extended supervision, we have no objection to
17 concurrent time.

18 If the Court chooses a lesser period of
19 time, however, we believe, then, that consecutive
20 sentences, since additional harm came to Teresa,
21 an additional punishment is certainly appropriate
22 for those aggravating factors. That's all we
23 have in this case, Judge. Thank you.

24 THE COURT: Mr. Fremgen?

25 ATTORNEY FREMGEN: Thank you, Judge. I

1 agree with the starting point that typically in a
2 sentencing that the Court considers those three
3 main factors. But I don't think this is a
4 typical sentence.

5 This, however, prior to March 1, 2006,
6 was a typical teenager. He had the typical
7 teenager angst, the typical teenager likes and
8 dislikes. He had a typical family functioning,
9 large family get-togethers, family that looks out
10 for each other, families that sometimes fight
11 each other, argue, vacation together, spend trips
12 and time together. When one person needs a baby
13 sitter, someone else picks up the slack.

14 Brendan was also typical in that he went
15 to school. Now, he wasn't typical as a student.
16 As the, uh, school records that have been placed
17 in evidence previously at trial indicate, he was
18 low-functioning at school, he had memory
19 deficits, uh, reading disabilities. He was below
20 the average in class, and from their own, um,
21 examinations found him to have low-functioning
22 in -- uh, intelligence quotient. He was in the
23 low to mid 70's, according to the school, and
24 pretty consistent with that done by Dr. Gordon
25 later.

1 Though typical that he went to school,
2 and typical that he tried, he didn't have the
3 typical results. Not the academic scholar. He
4 made some friends. Not many. He wasn't the
5 typical teenager from the standpoint of being
6 placed in some sort of a, uh, social click at
7 school. He was actually socially awkward and shy
8 in school. Made some friends, but mainly had one
9 particular friend, an ally, and that was his
10 brother, Blaine.

11 Brendan was not a very motivated
12 teenager. That, however, is not a very rare
13 breed, either. He still had aspirations, though.
14 He had aspirations of, at some point, despite not
15 having the normal school smarts, he was
16 interested in video games and had an interest at
17 some point of maybe even creating video games.
18 Obtaining the necessary technical training and
19 some point being able to be a productive member
20 of society in that regard.

21 Obviously, this all changed on March 1
22 of 2006. The presentence writer notes, and I
23 believe rather astutely, that Brendan is
24 typically a follower. He was not likely the
25 person being -- or the principal actor behind

1 Teresa Halbach's murder. I think one can imply
2 from the presentence writer that but for Steven
3 Avery, Brendan Dassey wouldn't be here today.

4 It's in the same vein that I think the
5 presentence writer, who notes that there should
6 be, quote, some light at the end of the tunnel
7 for Brendan, a light or realistic release date
8 for Brendan during his expected lifetime. And I
9 think the evidence at trial seems to support the
10 presentence writer's impressions as well. The
11 impressions of Brenders -- Brendan's dependent
12 character and the lack of a leading role in the
13 crime that he was convicted of.

14 Brendan is 17 years old. He is an
15 unsophisticated and simple person. He's a low
16 cognitive functioning child. He's a follower.
17 He's shy and quiet, awkward in social
18 circumstances, not easily approachable, and from
19 my own personal observations, he can be very
20 pleasant.

21 Brendan has no adult or juvenile record,
22 no contacts, whatsoever, with either juvenile or
23 adult system until, obviously, March 1, 2006. I
24 think, all in all, he is the antithesis of his
25 Uncle Steven, who was convicted, also, for the

1 killing of Teresa Halbach. And I think that to
2 treat Brendan different than Steven Avery, as
3 suggested by the presentence writer, and what I
4 believe is also supported by the evidence
5 elicited at the trial, considering Brendan's
6 character and the implication of Steven's --
7 Steven Avery's influence over Brendan, I think
8 treating them different is appropriate.

9 I agree with the presentence writer's
10 comments. To provide a light at the end of the
11 tunnel, as suggested in the presentence, is
12 appropriate, as well as it furthers the
13 rehabilitative goals in the prison system by
14 pro -- providing this additional incentive for
15 good behavior.

16 Eligibility is just that. It's
17 eligibility. Doesn't guarantee any release. At
18 some point, Brendan would have to request an --
19 another court, another body, an input from the
20 prosecutor, as well as the victim's family, would
21 have to be taken before that decision is made.
22 And it's for that reason we're asking the Court
23 to consider, as a light at the end of the tunnel,
24 in recognition of his age, his role, in
25 recognition that he would be in his middle age,

1 or close to his middle age, at the time of his
2 eligibility that the Court consider the 20-year
3 mandatory eligibility for release. Thank you.

4 THE COURT: All right. Any response?

5 ATTORNEY KRATZ: Nothing, Judge. Thank
6 you.

7 THE COURT: All right. The Court is going
8 to take about 15 minutes so I have an opportunity to
9 go over my notes. We'll be back on the record after
10 that.

11 (Recess had at 9:38 a.m.)

12 (Reconvened at 10:00 a.m.)

13 THE COURT: As we have heard by way of
14 penalties, the State recommended, on the major
15 charge, eligibility for extended supervision after
16 50 years incarceration. The defense argued for 20
17 years incarceration before eligibility. The minimum
18 period. The author of the presentence report, the
19 presentence investigation, uh, suggests, as noted by
20 both parties, that the defendant be made eligible
21 for extended supervision, but only after a
22 significant period of incarceration.

23 Her phrase, and I think the State used
24 this, quote, I feel, perhaps, allowing a little
25 light at the end of the tunnel will give

1 Mr. Dassey some hope of returning to society,
2 albeit some time in the very distant future, end
3 quote.

4 Uh, under Wisconsin law, we have long
5 held that sentences imposed by a court should be
6 for the minimum amount of confinement or custody
7 which is consistent with the protection of the
8 public, the gravity of the offense, and the
9 rehabilitative needs of the defendant.

10 Essentially, what a court does in trying
11 to fashion a sentence is consider the gravity of
12 the offense, the character of the offender, and
13 the needs of the community. Here, the -- the law
14 mandates life imprisonment. I have no
15 discretion, at least, with that part of the
16 sentence. We simply have a statute that says,
17 for first degree intentional homicide, life
18 imprisonment is the -- is the operative sentence.

19 The discretion that is given the Court,
20 and it is a limited amount of discretion, it is
21 to determine whether or not release to extended
22 supervision should be permitted at some future
23 date, and in any event, uh, not before 20 years
24 have been served in prison at incarceration.

25 So I'm going to use those factors that I

1 just mentioned, the gravity of the offense, the
2 character of the offender, and the needs of the
3 community, to discuss, really, whether extended
4 supervision -- eligibility for extended
5 supervision is appropriate in this particular
6 case.

7 First degree intentional homicide is the
8 most serious offense in our criminal code. Uh,
9 the gravity of it, under any circumstances, can
10 never be understated. This homicide, the brutal
11 killing of Teresa Halbach, was a homicide
12 aggravated by the rape and torture of a blameless
13 victim, a young photographer working for *Auto*
14 *Trader Magazine*, who wanted to establish her own
15 business, who had been lured on the premises by
16 Steven Avery, ostensibly to take pictures of a
17 car.

18 Trial testimony, as well as the
19 testimonials you've heard today, and the material
20 that's attached to the presentence investigation,
21 established that Teresa Halbach was, by any
22 measure, an exceptional young woman.

23 She was a summa cum laude graduate of
24 the University of Wisconsin-Green Bay, trying to
25 start her own photography business. She

1 continued to be active at her old grade school as
2 a coach. She was, unquestionably, beloved of
3 family and friends. One measure of that is the
4 massive search that was organized for her after
5 she was missing. Now, she will forever be 25.

6 The details of the rape and murder of
7 Teresa Halbach, her restraint in leg irons and
8 handcuffs, the sexual assault upon her by Brendan
9 Dassey and Steven Avery, her stabbing by Avery
10 and thro -- throat -- throat-cutting by Dassey,
11 were all part of this defendant's confession, as
12 was the information that she pleaded with him to
13 help her, or at least leave her alone.

14 This defendant helped her by
15 transporting her to the garage where Avery shot
16 her with a .22. Eventually, the two of them then
17 took her body to a fire pit, in which Avery had
18 started a fire, and into which they placed the
19 body.

20 This crime, or really these crimes, are
21 far and away the most serious this Court has ever
22 had come before it, and I certainly never, ever
23 want to see anything like it. This is sexual
24 assault, aggravated by torture, followed by a
25 brutal homicide, then, in an attempt to destroy

1 all traces of the body by burning, and this
2 defendant, by his own words, participated in all
3 of the most significant parts of it.

4 Uh, the prosecution talked a bit about
5 the character of the defendant, and I -- I wish
6 to ad -- address that aspect of the sentencing
7 factor as well. Why? Why did Mr. Dassey
8 participate in this? I don't know that we'll
9 ever really know, but there's nothing in his past
10 to suggest he would ever be involved in -- in
11 crimes as heinous as this, or any crimes for that
12 matter. He had no juvenile record. I don't
13 believe there's a -- a record of any contacts
14 with the Criminal Justice System.

15 He had no drug or alcohol abuse issues
16 so far as this Court is aware. The Mishicot
17 school psychologist and coordinator of special
18 services testified that he was not a behavioral
19 problem at Mishicot High School where he was in
20 the 10th grade.

21 ~~He was 16 years old at the time of these~~
22 crimes. Barely 16. His intelligent tests
23 generally ranked him in the low average range.
24 He took both mainstream and special education
25 classes.

1 The school had never identified him as
2 anyone easily influenced by others. Yet, he
3 involved himself in unimaginable crimes. The
4 major reason for this involvement was no doubt
5 the urging of his uncle, Steven Avery. I note
6 that the presentence writer has a sent -- has
7 a -- a -- has something on -- on -- in her
8 report. A quote. I'll quote: Being a young man
9 who is very impressionable, I do not find it
10 unfathomable for Brendan to be influenced by his
11 uncle's deviant behavior, end quote.

12 While Avery was probably the motivating
13 force, nothing prevented this defendant from
14 saying, no. He knows. He knew the difference
15 between right and wrong, good and evil. It was
16 his choice and he chose evil.

17 The defendant has recanted his
18 statements implicating himself in these crimes
19 and denies any participation on his part. In his
20 trial testimony, he offered no plausible
21 explanations for his earlier admissions. Quote,
22 I don't know, quote -- end quote; quote, I made
23 it up; quote, it didn't happen, end quote, were
24 typical responses to questions asked him at trial
25 about his previous inculpatory statements.

1 His letter, which is attached to the
2 presentence investigation, repeats these denials
3 and claims of innocence. For purposes of this
4 sentencing, the Court attaches no weight as an
5 aggravating factor to either the recantation of
6 the defendant's confession or his refusal to
7 acknowledge his guilt.

8 As I noted before, Wisconsin law makes
9 first degree intentional homicide punishable by
10 life in prison with my discretion limited to
11 setting an eligibility for extended supervision
12 release -- release date some time after the
13 defendant has served at least 20 years, although
14 I am not, as pointed out by the prosecution,
15 compelled to set an extended supervision
16 eligibility date.

17 The Court has looked at the gravity of
18 these offenses, conclude -- and concluded, as I'm
19 sure everyone else has as well, that they are of
20 the most heinous nature. A particularly vicious
21 homicide of one with whom this defendant was not
22 even acquainted. A victim who was innocent in
23 all senses of the word. A homicide preceded by a
24 sexual assault and followed by a corpse
25 mutilation.

1 That said, this defendant's youth, his
2 impressionability, his utter lack of
3 sophistication, the absence of any juvenile or
4 prior criminal record, and his secondary role in
5 the commission of these crimes serve as factors
6 which, while they don't explain or excuse his
7 in -- conduct, act, to some extent, as mitigating
8 factors for sentencing purposes.

9 On balance, this Court believes the
10 sentence -- the -- the defendant should be made
11 eligible for extended supervision, but only after
12 a substantial period of incarceration. I know
13 several family members suggested, uh, today that
14 extended supervision eligibility -- and
15 understand it is only that, it's eligibility,
16 there's no guarantee that it is going to come to
17 pass, but some family members suggested this
18 should not happen, and I can fully understand
19 their position.

20 But this Court has to, among other
21 things, establish some sense of proportionality
22 in sentences. This defendant is not situated in
23 the same manner as his uncle, Steven Avery, for
24 whom extended supervision elig -- eligibility was
25 not granted. While he participated in this

1 crime, he does not bring the same baggage to this
2 Court that Mr. Avery brought to his sentencing.

3 To make this defendant eligible for
4 extended supervision at the statutory 20-year
5 minimum as suggested by the defense, would, in
6 this Court's opinion, unduly depreciate the
7 gravity of these offenses. Court believes that
8 there is a moral need for punishment --
9 substantial punishment for these crimes. This
10 sentence must serve as a deterrent to all others
11 who would even consider this kind of behavior.

12 The community demands a significant
13 period of separation from one who would willingly
14 participate in the commission of these horrendous
15 acts. Also, I believe that the -- the nature of
16 these crimes suggest that this defendant needs a
17 substantial period of incarceration to
18 accommodate his rehabilitative needs.

19 These, then, are the factors which this
20 Court's sentence will address:

21 For the foregoing reason, the Court
22 sentences you, Brendan Dassey, on the crime of
23 first degree intentional homicide, as party to
24 the crime, to life in prison, and determines that
25 you will be eligible for release to extended

1 supervision on November 1, 2048.

2 On the charge of mutilating a corpse, as
3 party to a crime, I sentence you to six years
4 imprisonment. Four at initial confinement and
5 two at extended supervision. This sentence will
6 run concurrent with the life sentence.

7 On the charge of second degree sexual
8 assault, as party to the crime, after determining
9 that under the applicable sentencing guideline,
10 this crime represents an aggravated violation by
11 a defendant with lesser risk factors, I sentence
12 you to 14 years imprisonment. Ten shall be at
13 initial confinement and four at extended
14 supervision. This sentence shall run concurrent
15 with the previous two sentences.

16 The Court does not, at this stage, I
17 think for fairly obvious reasons, set any
18 extended supervision conditions.

19 The Court, under the statute, is to read
20 certain warnings at Section 302.114 (3) and (5).
21 I've provided those warnings to defense counsel.
22 Uh, Counsel, will you waive the reading of those
23 warnings?

24 ATTORNEY FREMGEN: Judge, we'll waive
25 reading, and I can acknowledge that we actually read

1 those to Mr. Dassey.

2 THE COURT: So he has been provided with
3 the warnings?

4 ATTORNEY FREMGEN: Correct.

5 THE COURT: Uh, just by way of explanation,
6 one warning is for what "bad time" constitutes while
7 incarcerated, and how a sentence can be extended
8 given, uh, the commission of certain acts while in
9 prison, and the other is the section that tells the
10 defendant how he can apply for extended supervision
11 at the time that he becomes eligible for extended
12 supervision. Have I correctly characterized those?

13 ATTORNEY FREMGEN: That's correct.

14 THE COURT: All right. Anything you wish
15 to add?

16 ATTORNEY FREMGEN: I can also add we also
17 went through the, uh, notice of the post-conviction
18 rights, as well as the, uh, uh, ineligibility for
19 voting and possession of firearm with our client.

20 THE COURT: All right. The -- the
21 defendant is to know that once he is a convicted
22 felon, as he is, that, uh, after being a convicted
23 felon, if he is ever found in possession of
24 firearms, that, in itself, I believe under nine
25 forty-one twenty-nine, constitutes a -- a separate

1 felony. Uh, anything more from the defense?

2 ATTORNEY FREMGEN: No, Judge. Thank you.

3 THE COURT: Mr. Kratz?

4 ATTORNEY KRATZ: Judge, I'm sorry, I -- I
5 didn't, uh, receive the -- the date in 2048 that the
6 Court --

7 THE COURT: November 1.

8 ATTORNEY KRATZ: November 1. Thank you.
9 And I assume the Court is establishing no specific
10 conditions of extended supervision? That to be left
11 to, uh, the Department of Corrections?

12 THE COURT: Yeah. Given the extended
13 nature of the incarceration, that will be left to
14 the Department of Corrections. Uh, the clerk
15 reminds me that I have to make a finding, uh,
16 regarding the eligibility for the Challenge
17 Incarceration Program or the Earned Release Program.
18 Because of the nature of these crimes, the defendant
19 is ineligible for either. Mr. Kratz, anything
20 further?

21 ATTORNEY KRATZ: Nothing, Judge. Thank
22 you.

23 THE COURT: All right. Uh, the defendant
24 is entitled to 534 days sentence credit. We're
25 adjourned.

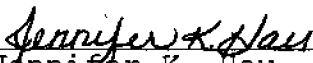
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ATTORNEY FREMGEN: Thank you, Judge.
(PROCEEDINGS CONCLUDED.)

1 STATE OF WISCONSIN)
) SS.
2 COUNTY OF MANITOWOC)
3

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 10th day of September, 2007.
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18 
19 Jennifer K. Hau, RPR
20 Official Court Reporter
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