

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

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 5

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 16, 2007

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

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

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

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

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

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

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESSES</u>	<u>PAGE</u>
 <u>JULIE CRAMER</u>	
Direct Examination by ATTORNEY KRATZ	5
Cross-Examination by ATTORNEY STRANG	28
Redirect Examination by ATTORNEY KRATZ	60
Recross-Examination by ATTORNEY STRANG	62
 <u>SPECIAL AGENT THOMAS FASSBENDER</u>	
Direct Examination by ATTORNEY KRATZ	63
Cross-Examination by ATTORNEY BUTING	134
Redirect Examination by ATTORNEY KRATZ	208
Recross-Examination by ATTORNEY BUTING	218
Further Redirect Examination by ATTORNEY KRATZ	221
 <u>WILLIAM BRANDES, JR.</u>	
Direct Examination by ATTORNEY KRATZ	223
Cross-Examination by ATTORNEY STRANG	230
 <u>TROOPER CINDY PAINE</u>	
Direct Examination by ATTORNEY KRATZ	235

	<u>EXHIBITS</u>	MARKED	OFFERED	ADMITTED
1				
2	128 & 129		28	28
	130 - 138		134	134
3	139 & 140		241	241
	141	238	241	241
4	142	142		
	145	195		
5	148 & 149	214		
	150 & 151	215		
6	152 & 153		241	241

7
8
9
10
11
12
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14
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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery, Case No. 05 CF
3 381. We're here this morning for a continuation of
4 the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, your Honor,
7 State appears by Calumet County District Attorney
8 Ken Kratz, Assistant Attorney General Tom Fallon,
9 Assistant District Attorney Norm Gahn, all appearing
10 as special prosecutors.

11 ATTORNEY STRANG: Good morning, as well.
12 Steven Avery is here in person; Jerome Buting and
13 Dean Strang on his behalf.

14 THE COURT: Thank you. Mr. Kratz, at this
15 time you may call the State's next witness?

16 ATTORNEY KRATZ: Thank you, Judge. The
17 State would call Julie Cramer to the stand.

18 THE CLERK: Please raise your right hand.

19 **JULIE CRAMER**, called as a witness
20 herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: Julie Cramer, last name is
25 C-r-a-m-e-r.

1 ATTORNEY KRATZ: Ms Cramer, if you could be
2 so kind as to pull the microphone a little bit
3 closer, we'll probably be able to hear you a little
4 bit better. Good morning, Ms Cramer.

5 **DIRECT EXAMINATION**

6 BY ATTORNEY KRATZ:

7 Q. Tell the jury, if you would, please, what, if
8 any, involvement you were asked to have in the
9 search for Teresa Halbach.

10 A. I'm with Great Lakes Search and Rescue Canine and
11 I handle a search and rescue dog. And we were
12 asked to come and help with the search for Teresa
13 Halbach.

14 Q. How long have you been involved in search and
15 rescue?

16 A. I started training search dogs in 1989.

17 Q. Do you know how many search dogs you have
18 trained?

19 A. I'm handling, currently, my sixth and seventh
20 dog. The dog that I work now is my fourth human
21 detection or cadaver dog.

22 Q. Do you work with a specific organization?

23 A. Our organization, Great Lakes Search and Rescue,
24 is a group of volunteers. We respond to any --
25 any agency request, whether it's law enforcement,

1 fire rescue, emergency management.

2 Q. How long has that organization been together?

3 A. Great Lakes was founded in 1992 and incorporated
4 in 1993, so we have been together 14 years.

5 Q. The agencies that you assist, including law
6 enforcement; do you assist any civilians in
7 civilian type searches?

8 A. We never respond to civilian requests. If a
9 family member of a missing person calls us, we
10 refer them to their agency. We get involved with
11 civilians on search scenes, but we always assist
12 agencies.

13 Q. Let's talk about the dogs themselves. Are there
14 different kinds of dogs for different kinds of
15 searches?

16 A. Sure, within the scope of search and rescue dogs
17 there are tracking dogs, like bloodhounds. There
18 are area search dogs that pick up the scent of a
19 person in clear areas. And then there are
20 cadaver dogs or human remain detection dogs.
21 They have two different names. And we have all
22 the types of dogs within our search team.

23 Q. Do different kinds of breeds need -- Let me ask
24 you this way, is a specific kind of breed
25 selected most often for these different kinds of

1 searches?

2 A. Yes, usually you select a breed that is most
3 adaptable to that kind of search. Bloodhounds
4 are known for their ability to track people. A
5 lot of the German Shepherd breeds are used for
6 area searches. Within the human remains
7 detection, you want a dog that's very high drive
8 and able to do the work. I handle a Belgian
9 Shepherd.

10 Q. What does high drive mean?

11 A. A dog that will keep working in spite of bad
12 weather, will find the same thing over and over,
13 or if you look for very small scent sources,
14 because we also look for evidence, not just whole
15 bodies.

16 Q. Is there a certification procedure for dogs?

17 A. Yes, there is. Within our dog team we have a set
18 of credentials that the dog has to train for a
19 year and then pass testing to show that they
20 are -- are qualified to do the work. And then,
21 depending on what part of the country you live
22 in, there's various testing that you need. We
23 have met all the testing available to us at this
24 time.

25 Q. What kind of training goes into a specific kind

1 of dog; in this case, a human remains detection
2 dog?

3 A. A lot of time. A lot of hours. Brutus, the dog
4 that I worked on this case has about 6,000 -- had
5 about 6,000 logged hours at the time that he
6 responded to this case.

7 So it's a weekly, monthly, daily
8 commitment of our handlers to work with their dog
9 in the area of expertise.

10 Q. The certification -- or to obtain a
11 certification, does that require some field
12 testing; in other words, that you actually go out
13 in the field and have to demonstrate the
14 reliability of the dog?

15 A. Yes, it does. And that has to be recertified
16 annually to a set of standards. The dog has to
17 be able to perform in different environments:
18 Wilderness, human contamination. They have to
19 work set up problems set by an outside evaluator
20 and they have to show that they can reliably
21 locate the source that was set up for them, both
22 on land and water, depending on your
23 certifications.

24 Q. There is a photo in front of you; it's Exhibit
25 No. 128. Can you tell us what Exhibit 128 is.

1 A. That is a picture of my dog, Brutus, and I. This
2 was our team picture taken this past year.

3 Brutus is a 10 year old Belgian Malinois, which
4 is one of the types of Belgian Shepherds. And he
5 is certified in human remains detection, both
6 land and water.

7 Q. All right. You said that Brutus was 10 years
8 old, can you give the jury a little background on
9 Brutus.

10 A. I obtained Brutus when he was about 18 months
11 old, from a dog shelter. We do a lot of
12 recycling of dogs. I started working with him as
13 my partner then. He and I have been certified
14 within our team here in Wisconsin and in northern
15 Illinois for the last eight years.

16 Q. Now, even though he had been certified eight
17 years ago, you had mentioned that the
18 certification process, especially for Brutus, is
19 an annual event; is that right?

20 A. Yes.

21 Q. Does Brutus have a track record or history that
22 you can explain to the jury?

23 A. Brutus has an extensive track record. He seems
24 to find the detection of human remains to be
25 something easy for him, like a labrador with

1 ducks. And he has worked hard at it for all
2 these years.

3 We have been on numerous searches and
4 he's established a track record in northern
5 Illinois and Wisconsin as a dog that works in
6 blood evidence and human remains detection.

7 Q. How many human remains detection cases has Brutus
8 been asked to assist on?

9 A. He's been out -- I have been out myself on about
10 200 human remains detection cases. Brutus has
11 accompanied me -- he is my third cadaver dog --
12 on about 150 of those. We have been successful
13 in about 70 cases.

14 Q. All right. When you mean -- or when you mention
15 the word successful, what does that mean?

16 A. That there's actually been something located in
17 the area we search. Establishing credibility for
18 a dog is a little bit hard because sometimes
19 we're not in an area where there is anything. So
20 sometimes you search really hard and there is
21 nothing there.

22 But Brutus does both land and water.
23 And he's worked hard and there have been about
24 approximately between 70 and 80 documented cases
25 where he has correctly indicated at something

1 that's later been determined to be part of a case
2 or human remains.

3 Q. On the flip side of that, has Brutus ever
4 indicated human remains when they weren't there;
5 in other words, has -- I don't know how to gently
6 ask this. Has Brutus ever been wrong?

7 A. We have not found Brutus to be wrong in that we
8 were able to say that he just barked to bark.
9 There have been times where what he has found is
10 not related to a case.

11 For instance, if he's working septic
12 systems, sometimes there have been barks where we
13 have learned over the years and through training
14 that we take things that you watch for with dogs.
15 He has to -- He is alerting not to a specific
16 person, but to the source that he is trained to
17 find.

18 One time we searched an area where there
19 were more than one -- there was more than one
20 source. We did locate three different sources;
21 the agency was only looking for one.

22 Q. All right. Now, Brutus isn't the only dog that
23 you have handled in the human remain detection
24 area; is that right?

25 A. That's correct.

1 Q. And Brutus -- Do you have other dogs, or are you
2 aware of other human remain detection dogs?

3 A. Yes. On our team -- On our team, Great Lakes
4 Search and Rescue Canine, there are three
5 certified human remain detection dogs right now
6 and three dogs in training that actually hope to
7 certify this year for the first time.

8 We also affiliate with a team out in
9 northern Illinois that has four dogs that have
10 passed their testing. So, if we were called
11 today to a search, we would have access to seven
12 human remain detention dogs that we know to be
13 qualified.

14 Q. And you are familiar with not only the
15 credentials, but the track record of all those
16 dogs; is that right?

17 A. Yes.

18 Q. What's the rank for Brutus among those human
19 detection dogs?

20 A. It sounds like a bias, because he's mine, but
21 right now he is the most experienced human
22 remains detection dog that we have available to
23 us.

24 Q. All right. In front of you, also, is an exhibit,
25 Exhibit No. 129. It's a piece of paper. Can you

1 tell us what that is, please.

2 A. That was Brutus' testing; that was his land
3 cadaver evaluation testing in 2005, which would
4 have been the last evaluation test he took prior
5 to the call on this case where he did pass.

6 Q. And, again, indicating a certification as to his
7 ability to perform these human remain detection
8 functions; is that right?

9 A. Correct. And there's both an area of wilderness
10 and urban. Urban, in the human remains detection
11 dog, is an area of human contamination: down
12 buildings, interiors. So he passed both his
13 wilderness and his urban human remain detection
14 testing in 2005.

15 Q. I'm going to ask you to just explain that a
16 little bit further. What are wilderness
17 detections and is that easier to do; then, let's
18 talk about the urban. All right.

19 A. Okay. Usually, when you start to train a dog,
20 you start with wilderness because it's a natural
21 environment. And to pass that test, the dog goes
22 out and finds a person, for instance, someone who
23 would be hiking in the woods and would be
24 deceased, or in a natural environment.

25 Normally, that's done first and then you

1 proceed into urban, which is the -- if you follow
2 urban the whole way, you could actually look at,
3 like, collapsed structure dogs. But Brutus and I
4 haven't worked that far into it. We have
5 maintained in this area rather than going to the
6 national response for hurricanes and disasters
7 and that kind of thing.

8 We do urban human remain detection. It
9 means he was certified to go into a building to
10 find people, go into piles of rubble. He's
11 worked in landfill and junkyard areas that have
12 contamination and he's still able to find
13 remains.

14 Q. All right. Before we get into this case, there
15 is one area that I found interesting and perhaps
16 the jury might, is you said water detection.
17 What is that?

18 A. Dogs are very successful in helping locate
19 drowning victims. And too many times people
20 think dogs can't find in water, but they can.
21 When a subject is underneath the water, they are
22 still giving off scent and so we train dogs to be
23 placed in boats and go out. And when they smell
24 the correct scent, they give an indication, in
25 most cases a trained bark indication. And that

1 helps assist divers in locating where to dive to
2 find -- to recover the body.

3 Q. How is a human remain detection dog, or the scent
4 given off, different than, let's say a
5 bloodhound, a live scent search that we do?

6 A. The scent isn't given off any differently, but
7 the difference is when a person is alive. Your
8 scent is very specific. Each of us smells
9 differently. It's almost as individual as a
10 fingerprint would be.

11 And so a live dog, a bloodhound, is
12 given an article of clothing and they go out and
13 follow that scent as it comes off a person. When
14 a person dies, your body begins to decompose.
15 And it's that -- that chemical and gas changes in
16 the body that a human remains detection dog is
17 trained to find.

18 And that human remains smell the same.
19 We all start to smell the same after we're
20 deceased. And so a human remains detection dog
21 is trained to find that smell as opposed to dead
22 animals, dead fish, or other smells. So it's a
23 similar type of training, but they are trained on
24 different sources.

25 Q. All right. Let's move, then, to the 5th of

1 November of 2005. Was your organization asked to
2 assist in this search effort?

3 A. Yes.

4 Q. And did you respond to the -- what's now known
5 as, or what the jury now knows as the Avery
6 Salvage Yard?

7 A. Yes, we did.

8 Q. Tell the jury what happened when you got there?

9 A. We were paged at approximately 1:00 in the
10 afternoon. We arrived on scene at 2:30 and we
11 were held at the roadblock. At approximately
12 3:30, they requested a dog team trained in human
13 remains detection to come and clear an area
14 within the Avery Salvage Yard; specifically, they
15 wanted us to check a car crusher.

16 Q. There's an exhibit, Ms Cramer, that's been
17 received as Exhibit No. 86, that the jury has
18 seen before. This is a larger version of that.
19 Will this exhibit allow you or help you explain
20 what you and Brutus did on the evening of -- of
21 the fifth?

22 A. On this -- At this first time, we were asked to
23 just bring one dog team down, so we took our most
24 advanced dog, our most experienced dog, which
25 would be Brutus. And we responded what would be

1 kind of from the bottom left corner of that
2 photo. We came up the roadway to the area that
3 would be a car crusher. We would have entered
4 this way and we came in and, I believe -- is this
5 the car crusher?

6 Q. Yes.

7 A. We were asked, first, to clear that location.

8 Q. What does clear that mean?

9 A. Take the dog through and determine if he's giving
10 any trained indication of human remains. When
11 Brutus smells what he believes is human remains,
12 he barks; he gives me a bark indicator. So we
13 did check this car crusher and we did not get any
14 indicator at the car crusher.

15 Q. All right. Where did you then take Brutus?

16 A. They then asked us to proceed through the area of
17 cars that were crushed, right in here. And we
18 did do that.

19 Q. Was there any indication of human remains?

20 A. He did not give any indicators there.

21 Q. Where did you go then?

22 A. Then they asked us to clear along this ridge way
23 down there.

24 Q. I need to stop you, Ms Cramer. When you say
25 they, who are you talking about?

1 A. There were investigators with us and I don't have
2 names, without referring to a report, but several
3 law enforcement investigators that went with
4 Brutus and I. My husband, Bob, served as my
5 backup.

6 Q. When a officer asks you, generally, or in this
7 case, specifically --

8 A. Mm-hmm.

9 Q. -- were they hinting to you or giving you any
10 indication of what it is that they wanted Brutus
11 to look for?

12 A. No. No. They are very careful not to do that.
13 Again, here, at this time, on the 5th of
14 November, we had no information for -- to
15 ourselves, other than we were helping with a
16 missing person case.

17 So we first checked the car crusher
18 here. We worked up here. Then there was a line
19 of cars up along a ridge, that's actually kind of
20 a elevated ridgeway, and they asked us to clear
21 that group of cars next.

22 Q. And did you and Brutus do that?

23 A. Yes. And in that area, Brutus did give a trained
24 indication. It was a vehicle that was underneath
25 some brush and there was a blue tarp there. And

1 he did indicate. He went to this vehicle very
2 quickly. He came back to me and sat and gave his
3 trained indication, which was a bark. I asked him
4 to show me again. He went back to the same
5 vehicle, barked and returned to me again.

6 Q. You asked him to show you again; what does that
7 mean?

8 A. Sometimes when a dog is in a big area, they bark,
9 we ask them to pinpoint. He had initially
10 approached this vehicle that was -- That is the
11 vehicle that we approached.

12 Q. Let me just stop you there. I put on the screen
13 and I didn't mean to interrupt you. But Exhibit
14 No. 31 has now been placed on the screen for the
15 remainder of your testimony. Why don't you go
16 ahead and tell us what, specifically, Brutus did.

17 A. We would have been approaching from the back.
18 The manner in which we were clearing, we're
19 coming this way. And Brutus works off leash, so
20 he ranges a distance from me.

21 He ran up to a vehicle that looked like
22 that and he was at the back doorway, kind of
23 where the wheel was, where the wheel cover was.
24 He came back to me and he barked. And the law
25 enforcement back there with me asked if he was

1 alerting and I said yes. And normally, when he
2 alerts, I ask him to show me; he returns to the
3 source that he has found.

4 He then came back and he was very
5 interested in this area. I recall because I was
6 worried he was going to knock this piece of
7 plywood over. He was alerting on the side of the
8 vehicle, barking, placing his paw on the vehicle.

9 Q. Now, alerting on a vehicle, as his trained
10 handler and working with him in 150 of these
11 cases, what if anything did that tell you?

12 A. That told me that Brutus felt that he smelled
13 blood or some type of human remain at that
14 vehicle. I did ask backup, the law enforcement,
15 if they wanted us to clear the interior of the
16 vehicle. They said, no, please secure your dog.
17 So, called him to me and secured him.

18 Q. So Brutus alerted twice on this vehicle; is that
19 right?

20 A. Mm-hmm. From the back, behind the piece of
21 plywood and from the side here.

22 Q. I don't know if you are able to answer this, Ms
23 Cramer, but is there a level of confidence that
24 you can attribute to Brutus; in other words, how
25 he was barking at you, confidence as far as his

1 alert?

2 A. There is. Sometimes the dogs will -- they
3 will -- they will have a scent. For instance,
4 they might be downwind of a scent and they will
5 bark, but it will be kind of a -- you can tell
6 they are smelling something, but it means you
7 need to investigate further. Other times they
8 definitely have a source.

9 This was definitely an indicator where
10 he wanted -- What he wanted me to do, what Brutus
11 wanted me to do was open this door for him. We
12 did not do that, but in some cases, you know, he
13 would proceed into the source. So he was
14 confident that he wanted me to come right there.
15 That's as close as he felt he could get to what
16 he was smelling. So he pawed the vehicle and
17 barked.

18 Q. All right. You said law enforcement asked you to
19 secure your dog; what does that intend?

20 A. That just means put him on a leash. Whenever we
21 respond, we aren't investigators, so we do what
22 we're told. Sometimes they simply want to see
23 what a dog does in an area. Other times they
24 need to do other things.

25 In this case, I asked if they wanted me

1 to approach the vehicle; they said no, secure
2 your dog. I put him on a leash. And then we
3 were actually taken back, away from the vehicle
4 at that time.

5 Q. Your team, that is the team of cadaver dogs, or
6 human remain detection dogs, were they used later
7 that evening?

8 A. Yes, we were used, actually, for five days. We
9 were used later that evening. Brutus and I were
10 redeployed. We had other dogs deployed into the
11 salvage yard, so, yes.

12 Q. Let's talk about you and Brutus. After Brutus
13 alerted -- By the way, do you remember the
14 weather that night?

15 A. Yes, it was getting uglier and uglier. There was
16 sleet. It was windy. And as darkness approached
17 it really got -- the visibility got bad. It was
18 freezing rainy snow.

19 Q. All right. By the way, does that weather
20 condition affect Brutus' reliability or ability
21 to find the scent?

22 A. It would depend on the area. It definitely cuts
23 down the distance from which a dog can work.
24 Because, obviously, if it's snowing and rain is
25 coming down, the dog can't find something from

1 far away. One of the reasons I have selected him
2 is he is really durable. So he doesn't care if
3 it's raining or snowing; he just has to get in
4 closer to his source to be able to find it
5 because he can't smell something on the breeze
6 like he would have on a nice day.

7 Q. The question, Ms Cramer, what was the weather
8 like when Brutus first alerted on this vehicle;
9 was that a factor at all?

10 A. The first alert, it was still just threatening.
11 It worsened as the evening went on. I don't
12 recall that at the time we first worked, that it
13 had started to sleet yet. It was just looking
14 ugly.

15 Q. You said that Brutus, with your assistance, then
16 was asked to check some other areas; can you tell
17 us about that, please.

18 A. That evening?

19 Q. Yes.

20 A. The next assignment, we did work some more in
21 that particular area of the salvage yard. We did
22 work around. There was a pond right there, so we
23 checked the perimeter of the pond and we checked
24 a few rows of vehicles there. Then we were
25 returned to base. And then we began to check

1 some buildings.

2 Q. Let me go back to Exhibit No. 86 and ask if you
3 recognize the trailer in what would be the
4 northwest corner of the Avery salvage property?

5 A. This trailer?

6 Q. Yes.

7 A. Yes. We did search that building, that evening.

8 Q. Who is we?

9 A. Brutus and I.

10 Q. All right. And were there any alerts that Brutus
11 found from within the building itself?

12 A. Within that building, we did get one trained
13 alert in a bathroom area.

14 Q. Thereafter, Ms Cramer, was Brutus taken outside
15 of the trailer?

16 A. Yes. The intention had been to work the
17 perimeter outside the trailer. Brutus proceeded
18 toward -- between this garage and this trailer
19 and was extremely agitated. But there was a
20 dog -- By this time it had gotten dark and it was
21 sleeting. There was a dog barking. I leashed
22 Brutus as to not engage the dog. I wasn't aware
23 of how long the dogs chain was or what type of
24 interaction the two dogs would have.

25 Q. Specifically, Ms Cramer, behind the garage, do

1 you see a darkened area on the photo or Exhibit
2 No. 86?

3 A. Yes.

4 Q. Could you point to that with your laser pointer,
5 please. Did Brutus ever, or was he allowed to
6 ever search behind that garage, in that area?

7 A. Not that evening. The marker that I used was
8 this white tank. He was at that tank and was
9 barking. But beyond the tank, I couldn't tell
10 where the German Shepherd reached, so I called
11 him back to me and leashed him at that time.
12 Then what he did is he ran -- he was pushing to
13 go this way and he actually ran kind of back in
14 this direction, toward another dog.

15 Q. Ms Cramer, I'm going to show you what's been
16 received for identification as Exhibit No. 50,
17 5-0; do you recognize that dog?

18 A. That would be the dog, that I believe, that was
19 barking at us that night in the dark.

20 Q. And this area, what appears to be a burned out
21 area, was this dog near the location that is seen
22 in Exhibit 50?

23 A. From my recollection, that's very similar to
24 where the dog was located. If I'm orientated to
25 this picture, the white tank would be somewhere

1 right over here. That's as far as my dog and I
2 approached right then. We weren't aware how long
3 his chain was.

4 Q. So the night of the 5th of November, Brutus
5 wasn't able to check this area for human remains;
6 is that right?

7 A. That's correct.

8 Q. The last question that I have for you is the
9 training that Brutus may have had in detection of
10 burned or incinerated human remains. First of
11 all, is it possible for a human remain detection
12 dog to be trained in that field?

13 A. Yes, it is. And prior to this case, we had
14 obtained cremated remains for training purposes.
15 One of the sources used in Brutus' 2005 test was
16 cremated remains.

17 At that time we had not worked that in
18 the field, but we had used it in certification.
19 Since the time of this case, Brutus has
20 successfully located some cremated remains on
21 another case.

22 Q. All right. And so although not given an
23 opportunity to find cremated remains that
24 evening, if given the opportunity, do you have an
25 opinion as to whether Brutus would have been able

1 to do that?

2 ATTORNEY STRANG: Objection, speculation.

3 Q. (By Attorney Kratz)~ Not talking about the
4 results, but would he have been certified or
5 trained in those detections?

6 A. Yes.

7 THE COURT: Just a second. Mr. Strang.

8 ATTORNEY STRANG: Speculation.

9 THE COURT: Parties wish to argue?

10 ATTORNEY KRATZ: Judge, the dog is
11 certified in that area, that's all I'm asking.

12 ATTORNEY STRANG: And I think the testimony
13 was he wasn't then.

14 (Court reporter couldn't hear.)

15 ATTORNEY STRANG: I believe the testimony
16 was, or the implication was, that he was not
17 certified at the time.

18 THE COURT: Mr. Strang, why don't you ask
19 some additional foundation questions.

20 ATTORNEY KRATZ: Mr. Kratz, you mean?

21 THE COURT: I'm sorry, Mr. Kratz.

22 Q. (By Attorney Kratz)~ Was Brutus certified at that
23 time in the detection of cremated human remains?

24 A. There is no specific test for that. One of the
25 sources on his 2005 evaluation was cremated

1 remains. He did successfully locate that in an
2 evaluation setting.

3 Q. So, let me ask it this way: In the past, that
4 is, prior to November 5th, 2005, Brutus has been
5 successful in identifying cremated human remains;
6 is that right?

7 A. Yes.

8 ATTORNEY KRATZ: Your Honor, I will move
9 the admissions of, I think it's Exhibit 128 and 129
10 at this time, otherwise I have no further questions.
11 Thank you.

12 THE COURT: Any objection to admission of
13 the exhibits?

14 ATTORNEY STRANG: I don't.

15 THE COURT: Very well, the exhibits are
16 admitted.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Good morning, Ms Cramer.

20 A. Good morning.

21 Q. Several minutes ago, you commented that at the
22 moment you can't remember the name of law
23 enforcement officers without looking at your
24 report; when did you prepare a report of this
25 case?

1 A. I prepared a report of this case in November of
2 '05.

3 Q. And do you have that with you today?

4 A. I don't have it with me.

5 ATTORNEY STRANG: Maybe we should just
6 approach, your Honor, briefly.

7 (Sidebar taken.)

8 Q. (By Attorney Strang)~ Would you bear with me just
9 a second and we'll see if this is helpful or it
10 may be of some use in refreshing your
11 recollection. I will just leave it with you. I
12 don't know that we'll need it, so we won't mark
13 it for the moment, but you can have it if you
14 need it.

15 Now, I gather that you have got at least
16 two -- two living beings you describe as a
17 partner; one is your husband Bob?

18 A. Yes.

19 Q. And the other is Brutus?

20 A. Yes.

21 Q. And it sounds like maybe you handle some other
22 four legged partners as well?

23 A. Yes.

24 Q. Where do you and your various partners live?

25 A. We live in Cedar Grove, Wisconsin.

1 Q. Give me a rough idea, is that Sheboygan County?

2 A. Sheboygan County.

3 Q. Do you have a TV? Do you have a television?

4 A. Yes.

5 Q. You do, okay. And you are responding here on
6 November 5, 2005?

7 A. Yes.

8 Q. Do you suppose you had had your television on at
9 any time between -- let's say 10:00 on
10 November 3, 2005 and the time you came up to
11 Manitowoc County from Cedar Grove?

12 A. Actually, we were at a map and compass training
13 in Milwaukee and we were not at home at the time
14 of the call. We responded from the nature center
15 in Milwaukee County.

16 Q. Okay. That was a conference that you were
17 attending?

18 A. It was map and compass training for the canine
19 team.

20 Q. When you arrived, up in Manitowoc, or actually in
21 what I will call the Avery salvage property --

22 ATTORNEY STRANG: And I'm going to ask
23 Mr. Kratz if he would put exactly that one back up
24 on the screen, 86; is that right? Maybe we'll --
25 What I'm interested in is, I want to have the

1 crusher and the pond and the southern ridge.

2 ATTORNEY KRATZ: How's that?

3 ATTORNEY STRANG: Sure, just great.

4 Q. (By Attorney Strang)~ So by the time you got up
5 here, it's 2:30 and you are detained out at the
6 check in point back up by Highway 147 for about
7 an hour?

8 A. Yes.

9 Q. Come in, and you describe for us the route you
10 went, and I don't need to repeat that, but I did
11 want to pick up on the car under the tarp, okay?

12 A. Okay.

13 Q. Was the car under the tarp when Brutus approached
14 that particular car?

15 A. Wasn't really under a tarp. There was a blue
16 tarp near the vehicle. It had wood on it and
17 there was a series of cars in a row, but the blue
18 tarp is how I recollected where that car was.

19 Q. Sort of tented over the car?

20 A. Yes, kind of on the side.

21 Q. What do you mean by on the side?

22 A. Tented partially over that car on the front end
23 of the car.

24 Q. But Brutus didn't have to go under the tarp to
25 get to the rear passenger wheel well, for

1 example?

2 A. No, he did not.

3 Q. He did not have to go under the tarp to get to
4 the rear cargo door area?

5 A. No, he did not.

6 Q. And those were the two places where he barked?

7 A. Yes.

8 Q. And at that point, the sleet probably had not
9 started, is your recollection?

10 A. That's my recollection.

11 Q. The wind hadn't picked up yet?

12 A. No.

13 Q. And then, what you went, then, is, further --
14 South is up in this picture, okay. We all know
15 that. I'm just going to suggest that to you. So
16 to the right is west?

17 A. Yes.

18 Q. You sort of worked further west along that line
19 and then around the perimeter of the pond a
20 little bit?

21 A. Yes.

22 Q. Now, setting aside partner Bob and the other --
23 any other partners in your life. Let's talk
24 about partner Brutus for just a minute. Brutus
25 is a dog?

1 A. Yes.

2 Q. Does Brutus get some time to just be a dog?

3 A. Yes.

4 Q. Does he live with you?

5 A. Yes.

6 Q. Inside dog?

7 A. Yes.

8 Q. And does -- When Brutus is off duty and just kind
9 of hanging out being a dog, does he ever behave
10 like a lot of other dogs?

11 A. Yes.

12 Q. Does he bark?

13 A. Rarely.

14 Q. But he will sometimes bark?

15 A. Yes.

16 Q. For example, when he's telling you things, when
17 he's telling you, please, open the door for me on
18 the Toyota; he's doing that by behaviors,
19 correct?

20 A. Right.

21 Q. He hasn't mastered English?

22 A. No.

23 Q. Or any other language you speak?

24 A. No.

25 Q. So barking is one of the things he does that will

1 tell you, as his partner, what it is he wants.

2 A. Barking is the behavior we have reinforced for
3 cadaver recovery, yes.

4 Q. And you described even, for the jury, that
5 sometimes -- my word now -- you get sort of a
6 tentative bark when something is in the wind, so
7 to speak, and sometimes, again my word, more of a
8 definitive or determined sort of bark?

9 A. Yes.

10 Q. And the art of this is interpreting -- your
11 interpretation of the gradations between those
12 two sort of barks?

13 A. Yes, and proving it in evaluation.

14 Q. And will Brutus tend to bark when he's confronted
15 with, say a German Shepherd?

16 A. Yes.

17 Q. Is he interested in other dogs?

18 A. Not primarily, if the dog barks at him, he will
19 bark back.

20 Q. Mm-hmm. And does he like to sniff other dogs in
21 the way that dogs introduce themselves
22 particularly?

23 A. He's not as interested in dogs as some but, yes.

24 Q. When you are working him, he gets a break from
25 time to time?

1 A. Yes.

2 Q. Probably every hour or so?

3 A. Depending on circumstances, yes.

4 Q. He gets some sort of a reward at a break time?

5 A. Yes, water.

6 Q. Water. And by reward, I don't necessarily mean a
7 dog bone or something, but a scratch on the ear,
8 some -- some sort of reinforcement that he's
9 appreciated?

10 A. Yes.

11 Q. And that would include water, typically, for
12 Brutus?

13 A. Yes.

14 Q. Now, you -- I'm going to use a sort of a fancier
15 word than Mr. Kratz did, but you just straighten
16 me out if you don't understand me, because I sort
17 of suspect you will. In handling canines or
18 trained dogs, one of the things you are
19 interested in is false positives, true?

20 A. Yes.

21 Q. A false positive here would mean an alert that
22 the dog gives when, in fact, there is no source
23 on which the dog would have been trained to
24 alert?

25 A. That would be a false positive.

1 Q. Okay. You are also interested in false
2 negatives, true?

3 A. Yes.

4 Q. A false negative would be when, for example, as a
5 matter of a training exercise, you know, or
6 someone knows, because usually this would be done
7 blind to you, correct?

8 A. Correct.

9 Q. But someone who has set up the training exercise
10 knows that there is a scent source on which the
11 dog has been trained, correct?

12 A. Correct.

13 Q. If the dog covers the area in which the scent
14 source is hidden, but fails to give an indication
15 or alert, that would be considered a false
16 negative?

17 A. Correct.

18 Q. In other words, the dog missed it?

19 A. Yes.

20 Q. And that was a mistake, because we know it's
21 there?

22 A. Right.

23 Q. All right. What is, or now doesn't matter so
24 much, but as of November 5, 2005, what was
25 Brutus' rate of false negatives?

1 A. Brutus' rate of false negative would be very low.
2 I would have to refer to a lot of logs because
3 it's about 6,000 hours of training. He very
4 rarely has missed a source. I can't say never,
5 but very rarely.

6 Q. And, indeed, the false negative rate is not
7 something you have ever calculated for Brutus?

8 A. No.

9 Q. What was his rate of false positives in November,
10 2005?

11 A. False positives are, when you are training a
12 cadaver dog, the bigger concern because the dog
13 is trying to please a handler.

14 Q. Yes.

15 A. But Brutus worked through that about five years
16 earlier. His rate of false positive has also
17 been very low as his training progressed with his
18 age.

19 Q. So, up until about five years before this, let's
20 say 2000, roughly, Brutus had a noticeable and
21 unacceptable rate of false positives?

22 A. Not unacceptable. When you shape a behavior with
23 an animal, any animal, you are always building
24 toward that perfect behavior. And so with a dog
25 that is very intense in what they are doing, a

1 false negative -- a false positive, I'm sorry,
2 would be initially an attempt to please a
3 handler.

4 And that's what you train for. And
5 until that reaches an acceptable level, you
6 normally can't pass an evaluation. That's the
7 reason that we pass certification testing, is
8 when we feel that the dog is at a level that is
9 reasonable. And Brutus did that a long time ago,
10 at his age.

11 Q. About five years ago?

12 A. He has actually passed that for eight years;
13 seven years at the time of the case.

14 Q. All right. But you have not calculated a false
15 positive rate for him, either?

16 A. No.

17 Q. So as you sit here today, you don't know what the
18 false positive rate is, other than your sense is
19 that it's very low.

20 A. Correct.

21 Q. To be entirely fair, it's very difficult with
22 task dogs like this to know what's a false
23 positive out in the field?

24 A. That's true.

25 Q. Because sometimes you may not necessarily find

1 the scent source that the dog correctly is
2 finding?

3 A. That's correct.

4 Q. So the falseness, so to speak, may be the human
5 inability to find a scent source that the dog
6 does smell?

7 A. Right.

8 Q. Okay. Now, in that regard, these dogs have just
9 enormously sensitive capacity for smell?

10 A. Yes.

11 Q. This is called the olfactory sense, correct?

12 A. Yes.

13 Q. People like you who, for 18 years, have been
14 training dogs like this, have no idea how it is
15 that this olfactory smell -- or sense of the dog
16 gets so well developed?

17 A. That's true.

18 Q. What you know is, that it is, correct?

19 A. Yes.

20 Q. So if you are working a human remains dog, if you
21 are working a human remains dog in specific, in
22 this part of the world, let's say Wisconsin,
23 northern Illinois, you sometimes have to go back
24 and try to learn, if you can, are their native
25 American Indian burial grounds in the area, for

1 example?

2 A. Yes.

3 Q. Because the dog may pick up on human remains that
4 are 1,000, conceivably 2,000, years old, true?

5 A. That would be possible.

6 Q. You have to be aware of, maybe from the local
7 historical society, was there a 19th century
8 cemetery or family burial plot in the area that
9 I'm working, because the dog may be picking up
10 those remains?

11 A. Yes.

12 Q. You have to be aware of the locations of
13 mortuaries and, for example, whether you are
14 downstream, as a matter of the water table, from
15 the septic system of a mortuary or crematorium?

16 A. Yes.

17 Q. But all that said, what the dog really is
18 smelling is decomposing human remains, correct?

19 A. Yes.

20 Q. Human remains meaning human tissue, skin, bone,
21 muscle, ligament, that sort of thing?

22 A. We train on that and blood, bone.

23 Q. And exactly, very good, and that's exactly where
24 I was going. So we have human tissue and also
25 human bodily fluids, correct?

1 A. Yes.

2 Q. A dog will hit on decomposing blood, or should,
3 if properly trained, correct?

4 A. Yes.

5 Q. Other human bodily fluids, a dog will hit on
6 conceivably --

7 A. Yes.

8 Q. -- correct? And so what happens is, the minute
9 tissue comes off us, for whatever reason, or
10 lands on the ground, a process of decomposition
11 begins, correct?

12 A. Correct.

13 Q. This is an ordinary biochemical process?

14 A. Yes.

15 Q. There are bacteria in the human body at all times
16 and then other bacteria on the ground, or grass,
17 or in the environment, that will begin to
18 breakdown human tissue?

19 A. You are sort of speaking, though, of life scent,
20 scent coming off a live person. A human remain
21 detection dog needs a source of either blood, or
22 teeth, or hair, to give off that scent.

23 Q. Correct.

24 A. What's coming off you is live scent.

25 Q. I understand that. That's why I'm saying the

1 minute human tissue hits the ground or is no
2 longer connected to me, for whatever reason,
3 that's what I'm talking about, okay?

4 A. Okay.

5 Q. Are you with me? I'm not talking about while my
6 tissue is on me or in me? Okay?

7 A. Right.

8 Q. But let's say now that -- that I have cut myself,
9 okay? Badly enough to be dripping blood all
10 over. After I faint, and you folks have to
11 revive me, we can worry about the dog. But let's
12 say I'm doing that, and at that point the -- the
13 blood drips on the floor are going to begin to
14 decompose?

15 A. Yes.

16 Q. And we don't think of that immediately, but
17 that's biochemically what's going on at that
18 point, correct?

19 A. Yes.

20 Q. And if it were a good day or a normal day, the
21 typical day for Brutus, if you brought him into
22 this courtroom a day, or two, or a week, or a
23 year after I had bled all over the carpet,
24 assuming no one had, you know, been successful in
25 so cleaning the carpet as to remove all scent of

1 my decomposing blood, you would expect an alert?

2 A. Yes, I would.

3 Q. In training these dogs, it is not uncommon for
4 you to use, I guess what politely could be called
5 medical waste?

6 A. We obtain it from a coroner, but I think that's
7 what you are asking me.

8 Q. Yeah. That is, actual human remains?

9 A. Yes.

10 Q. Although, not necessarily an entire cadaver?

11 A. No.

12 Q. Or corpse?

13 A. No.

14 Q. Other than a sort of specialized farm in
15 Tennessee, under the control of the University of
16 Tennessee, there really isn't a training or
17 proving ground in this country where an entire
18 corpse or cadaver would be used for the purpose
19 of training dogs?

20 A. That is correct.

21 Q. There are essentially three ways to train the
22 human remains dogs that you have described for us
23 here. One would be to use something like a pig
24 carcass.

25 A. We do not do that.

1 Q. Right. And most responsible human remains dog
2 trainers no longer use a pig carcass or parts of
3 a pig, correct, in training?

4 A. Correct.

5 Q. Because although pigs are very similar to humans
6 in some ways, the fact is that there will be --
7 or a dog may be able to detect differences in
8 decomposing pork or pig carcass as opposed to
9 decomposing human remains?

10 A. That's correct.

11 Q. Another, if we go up the scale then in
12 reliability, another way to train or test or
13 prove these dogs is to use something called
14 pseudo corpse, true?

15 A. That's correct.

16 Q. That's a chemical compound that's produced
17 commercially and available for sale?

18 A. We do not use that, but I'm aware of the product.

19 Q. And the trend, you know, in your business, is
20 moving away from using pseudo corpse, or this
21 chemical product, correct?

22 A. Correct.

23 Q. But at least the idea of pseudo corpse is that
24 it's supposed to mimic very closely the
25 collection of gases that emit from decomposing

1 human tissue?

2 A. Yes.

3 Q. That's at least the theory, correct?

4 A. Mm-hmm. Yes.

5 Q. And then the most reliable and third or final

6 means of training or proving a human remains dog

7 would be to use actual human remains of some

8 kind, correct?

9 A. Correct.

10 Q. Now, these might be obtained lawfully from a

11 coroner's office.

12 A. All of our sources are obtained lawfully.

13 Q. Right. And that's why -- that's why I said that.

14 I understand you do this lawfully. And that's

15 off the table, okay. So when I say obtaining

16 human remains, it's understood you are doing this

17 lawfully.

18 A. Yes.

19 Q. Fair enough. But a coroner's office might be one

20 source.

21 A. Yes.

22 Q. Hospitals might be another source?

23 A. Not for us, but I'm sure you could.

24 Q. For other people in this business?

25 A. Mm-hmm.

1 Q. Okay. But what is obtained, then, without
2 becoming completely indelicate, is some small
3 quantity of some sort of human remain, not a
4 corpse or a cadaver?

5 A. That's correct.

6 Q. The dog, then, is alerting to, or is trained to
7 recognize the package, if you will, of gases and
8 scents that are released in the decomposition or
9 the breaking down of this sort of human tissue.

10 A. Yes.

11 Q. If we were chemists we would be talking about
12 esters and alchemies as the source of these
13 odors.

14 A. Okay.

15 Q. Is that --

16 A. You are okay. I'm not a chemist.

17 Q. Okay. I mean is that something you heard --

18 A. Yes.

19 Q. -- or ever been taught?

20 A. Yes.

21 Q. Okay. I couldn't begin to tell you which esters
22 and which alchemies, but this is the chemist's
23 name for the molecular structure of these gases
24 that are given off.

25 A. Okay. Yes.

1 Q. One of the gases that decomposing human tissue
2 gives off actually is very common, commonly
3 understood, and that's methane?

4 A. Yes.

5 Q. But that's only one of the gases, correct?

6 A. Right.

7 Q. So one of the challenges if you are going to work
8 a dog in a landfill, for example, is to train him
9 not to hit only on methane.

10 A. Correct.

11 Q. Correct, because landfills give off all kinds of
12 methane --

13 A. Correct.

14 Q. -- true? That's because any sort of living
15 tissue in either the animal or plant kingdom, as
16 it decomposes, will release methane gas?

17 A. Yes.

18 Q. You are not interested in that, per se, you are
19 interested in methane only to the extent that
20 that is part of the cocktail of odors and gases
21 that decomposing human tissue gives off?

22 A. That's correct.

23 Q. But a landfill is a challenging site --

24 A. Yes, very.

25 Q. -- for a human remains dog, for this reason?

1 A. Yes.

2 Q. Likewise, a salvage yard, have you ever worked a
3 salvage yard before?

4 A. Not this large a salvage yard, no.

5 Q. But you have been to that type of scene?

6 A. Yes.

7 Q. Okay. And one thing you know that you have in
8 salvage yards is some number of cars.

9 A. Yes.

10 Q. Some of those cars are just old and they went
11 kaput and stopped running and somebody towed them
12 off to the salvage yard?

13 A. Yes.

14 Q. But some of them, though, were wrecked or ruined
15 in car accidents?

16 A. Yes.

17 Q. Car accidents, unfortunately, sometimes cause
18 human beings to bleed?

19 A. Yes.

20 Q. Sometimes profusely bleed?

21 A. Yes.

22 Q. When the car is towed off after the wreck,
23 ordinarily no one has made any effort to clean up
24 the blood, or worse, of the human remains in that
25 wrecked car.

1 A. That's true.

2 Q. So a salvage yard, particularly one this size,
3 with over 4,000 wrecked cars, is also a
4 challenging environment for a dog?

5 A. Yes.

6 Q. You had here, as a matter of fact, a number of
7 alerts from Brutus to cars in the salvage yard?

8 A. Yes, we did.

9 Q. Most of those, I'm just going to set aside the
10 Toyota that you described, most of those human
11 beings later decided, didn't have any relevance
12 to the investigation, correct?

13 A. That would be up to the investigators.

14 Q. Right. I mean, your job was simply to say,
15 Brutus is barking, he is alerting on the trunk of
16 this car, or the backseat of this other car.

17 A. That's right.

18 Q. The investigators take it from there?

19 A. Yes.

20 Q. But it would not surprise you to learn that
21 investigators, then, may have decided there is
22 another source of human remains here and it means
23 nothing?

24 A. Yes.

25 Q. This dog, Brutus, never was scented, if you will,

1 for Teresa Halbach?

2 A. No, you don't scent human remains detection dogs.

3 Q. Right. And this "scent" is normally a noun, not
4 a verb, as we just used it. Let's explain that a
5 little bit. By scenting a dog, what that means,
6 in your special field, is if we have a search and
7 rescue dog, a bloodhound typically, but not
8 necessarily exclusively, could be a beagle or
9 something, correct?

10 A. Correct.

11 Q. What we would do is give an article of clothing;
12 a shoe, a shirt, something that's known to belong
13 to the missing person?

14 A. Yes.

15 Q. Let the dog smell that or get the scent of that
16 item of clothing, correct?

17 A. Yes.

18 Q. And then ask the dog, on leash or off, whether he
19 can find the scent?

20 A. That's correct.

21 Q. And then to follow the scent.

22 A. Yes.

23 Q. So it's not -- So for those dogs, it's not so
24 much an alert process as it is being trained in
25 the process of leading a handler along the path

1 of the scent, if the scent is detected?

2 A. Yes.

3 Q. Brutus was not given Teresa Halbach's scent?

4 A. No.

5 Q. Because you don't do that with the human remains
6 dog?

7 A. That's correct.

8 Q. Brutus, then, to the extent he was alerting on
9 the Toyota, could not tell you whether he was
10 smelling the remains of Teresa Halbach?

11 A. That's correct.

12 Q. He could not tell you whose remains, obviously,
13 he might have been smelling?

14 A. That's right.

15 Q. He could not tell you whether it was human bodily
16 fluid or human tissue that he was smelling?

17 A. That's right.

18 Q. He could not tell you whether the person who left
19 the body tissue or the bodily fluid was alive or
20 dead?

21 A. That's right.

22 Q. What he could tell you was that someone has left
23 some sort of human remains here?

24 A. That's correct.

25 Q. In the example I gave of my cutting my hand and

1 bleeding all over the floor, presumably I could
2 be rendered first-aid, or I could put a little
3 bandage on, or something, and I would go on just
4 fine.

5 A. That's correct.

6 Q. Some people might not be happy that I'm going on
7 just fine, but I would go on just fine, right?

8 A. Right.

9 Q. But, nonetheless, Brutus would alert on human
10 remains on the floor?

11 A. Yes.

12 Q. So the label of a cadaver dog is one that you
13 rightly tend to shy away from a little bit and
14 prefer human remains detection dog?

15 A. I prefer it, because sometimes we're looking for
16 evidence not corpses.

17 Q. Not corpses, exactly. And in any event, unless
18 you find a corpse, there is no way to know that
19 an alert means a corpse?

20 A. You would normally look for what source the dog
21 was hitting, whether it was a corpse or material.

22 Q. Tissue or fluid.

23 A. Mm-hmm.

24 Q. And by fluid, let's -- let's get specific about
25 that. Menstrual blood?

1 A. Yes.

2 Q. Semen?

3 A. Yes.

4 Q. How about saliva?

5 A. Yes.

6 Q. By tissue, let's get a little more specific;

7 skin?

8 A. Yes, the only -- the only thing I guess I want to

9 say is, in a way you seem to cross over into live

10 scent. You know, I'm sloughing skin off.

11 Q. Right.

12 A. My cadaver dog isn't going to hit on that. There

13 has to be a piece of a finger, a pool of blood.

14 So, that's like with saliva, if somebody talks

15 and spits saliva, my dog isn't going to hit on

16 it. Now, if there was a large quantity of saliva

17 that was allowed to sit long enough, I may or may

18 not get a hit. I haven't actually tested that.

19 Q. But -- But you might.

20 A. Correct.

21 Q. Yeah. And it's a very good point. So there is a

22 volume issue here?

23 A. Yeah. You can't just -- Live scent would be skin

24 sloughing off. That would be something that a

25 bloodhound would be much more interested in than

1 a cadaver dog.

2 Q. Or -- Or even if he we don't think of it as live,
3 I mean, sloughed off skin cells aren't dead?

4 A. Plus, they stop. There's only a life span on
5 that. If you would have -- That's why a tracking
6 dog needs to be brought on scene, they like to
7 say within 72 hours, because at some point that
8 stops being an effective source for that dog.

9 But if there is an actual tooth, or a
10 finger, or a pool of blood, that, then, is going
11 to give off a source -- a scent that the dog will
12 hit on.

13 Q. And lasts much longer --

14 A. Yes.

15 Q. -- conceivably?

16 A. Yes.

17 Q. Right down to the example we started with, you
18 know, the native American who died a thousand
19 years ago?

20 A. Correct.

21 Q. But the -- What I guess the point is, again, as
22 you said, a tooth; it could be bone material; it
23 could be skin, if in sufficient quantity; could
24 be muscle tissue, correct?

25 A. That's correct.

1 Q. The dog will alert to all of these things,
2 regardless of whether the person who left it is
3 alive or dead?

4 A. That's correct.

5 Q. Did I understand you correctly -- and we're
6 probably -- probably done with Exhibit 86 -- I
7 don't know, let's find out if we need another
8 photo. You -- You were shown on direct
9 examination a photo that had a trailer down in
10 sort of a diagonal opposite corner of this
11 property?

12 A. Yes.

13 Q. If we call that Steven Avery's trailer, is that
14 something you recognize?

15 A. I worked in that trailer, yes.

16 Q. And you know it -- you know it to have been the
17 home of Steven Avery?

18 A. I do now.

19 Q. Okay.

20 A. I did not at the time I searched it.

21 Q. Fair enough. But you do now. Did you work
22 Brutus through that entire trailer?

23 A. Yes. We entered in through the door and worked
24 the interior.

25 Q. From stem to stern?

1 A. As much as investigators asked me to search, yes.

2 Q. Well, and was that from one end to the other?

3 A. Yes.

4 Q. The one alert that you got was in the bathroom?

5 A. Yes.

6 Q. The bathroom of a home is a place where one would
7 not uncommonly find human bodily fluid?

8 A. That's true.

9 Q. Traces of urine, for example.

10 A. Yes.

11 Q. Not -- If there's a man living and using the
12 bathroom, one would not uncommonly find traces of
13 blood, at least if he's someone who shaves in the
14 morning?

15 A. That's true.

16 Q. So what the source, again, of the alert was, you
17 are not able to say?

18 A. No.

19 Q. Neither was Brutus?

20 A. No.

21 Q. Did you work to the master bedroom, the bedroom
22 at the far --

23 A. Yes.

24 Q. -- upper left here?

25 A. Yes.

1 Q. No alerts in the master bedroom?

2 A. No.

3 Q. Did you have a chance to work Brutus in the --

4 inside the attached -- or the detached garage,

5 that's about square in the middle of the portion

6 of Exhibit 86 that we have on the screen?

7 A. No, we did not. We only worked as far as the

8 tank where he was barking and then he skirted

9 around to another area.

10 Q. Meaning he ran up along to the east here, to the

11 left?

12 A. Yes, he ended up proceeding behind the next

13 building.

14 Q. Where did he go?

15 A. There was an area of four burn barrels which he

16 barked at.

17 Q. Oh. This is what you now know to be the Janda

18 trailer?

19 A. I don't know whose trailer that is.

20 Q. But it was a blue trailer --

21 A. Yes.

22 Q. -- just east of Mr. Avery's garage?

23 A. Yes.

24 Q. And there were four burn barrels in the back?

25 A. Yes.

1 Q. He alerted on those?

2 A. Yes.

3 Q. Where did he go from there?

4 A. There was another dog barking. The weather at
5 this point was very bad so they asked me to
6 secure him. And we then returned to base.

7 Q. And the other dog was over by this blue trailer?

8 A. Yes. And we exited the property off site of this
9 picture. We came out to the road.

10 Q. Were you actually handling dogs before 1989?

11 A. Not in the search and rescue capacity.

12 Q. Understood, but were you working with trained
13 dogs, guide dogs --

14 A. Yes.

15 Q. -- or other human assistance dogs?

16 A. Yes.

17 Q. Okay. Dogs have been a passion of yours for a
18 long time?

19 A. Yes.

20 Q. You have worked with hundreds of dogs?

21 A. Yes.

22 Q. Maybe thousands?

23 A. Maybe.

24 Q. Those have included all kinds of shepherds?

25 A. All breeds.

1 Q. And specifically a range of shepherds, correct?

2 A. Specifically shepherds, yes.

3 Q. Okay. A Belgian Shepherd here; you have worked
4 with German Shepherds?

5 A. Yes.

6 Q. And if someone asked you, do you think you could
7 have approached and handled the dog behind
8 Mr. Avery's garage?

9 A. I didn't have enough contact to know that. The
10 weather really was a factor.

11 Q. Sure.

12 A. And I -- I was concerned about my working partner
13 at that time. The dog was sounding off, whether
14 that was aggressive or not, we didn't really stop
15 to make that determination.

16 Q. Fair enough. So I guess the answer is maybe,
17 maybe not?

18 A. We could not have worked that area without
19 removing that dog from the site. I won't work my
20 dog with somebody else's dog chained in the area.
21 So we couldn't work the area, but I could make a
22 determination on whether I could have handled
23 that dog or not.

24 Q. Okay. Have you met dogs you couldn't handle?

25 A. Oh, yeah.

1 Q. Okay.

2 ATTORNEY STRANG: That's all I have. Thank
3 you. Thank you, very much.

4 THE COURT: Mr. Kratz, any redirect?

5 ATTORNEY KRATZ: If I could have just a
6 moment, Judge.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY KRATZ:

9 Q. Mr. Strang asked about false positives and false
10 negatives, have you had an experience,
11 specifically with Brutus, where Brutus alerted,
12 found a scent that was originally believed to
13 have been a false positive that actually turned
14 out to be an accurate reflection of some
15 evidence?

16 A. We had two, both in 2005, that come to mind. In
17 one case we were called to a drowning situation
18 where it was believed a driver and his vehicle --
19 the driver had Alzheimer's -- had entered a canal
20 in northern Illinois. Brutus gave a very
21 definitive alert in an area that would have been
22 logical where the vehicle could have been gone
23 in. Divers looked without success for two days.
24 We cleared scene.

25 I was very concerned about that as a

1 false positive. Bothered me a lot in training.
2 Some weeks went by and we received a call from
3 the agency that as a barge had gone through
4 taking corn in this canal, they had struck
5 something and in finding out, it was the vehicle.
6 It had obviously gone in with enough force it was
7 silted into the river. They were able pull to
8 the vehicle out and the driver was within the
9 vehicle.

10 That was an example of what looked to be
11 a false positive that was true. We also had an
12 evidence kind of case, same kind of thing.

13 Q. Let me just -- My point is that Brutus has been
14 found --

15 A. Yes.

16 Q. -- before, to be accurate, when even humans --

17 A. When we thought --

18 Q. -- couldn't find what --

19 A. -- he was wrong, yes.

20 ATTORNEY KRATZ: That's all I have of Ms
21 Cramer, Judge.

22 ATTORNEY STRANG: I'm just taking one last
23 look at the report. I probably will have no further
24 questions, but if I could just have a moment or two.

25 THE COURT: Go ahead.

RECROSS-EXAMINATION

1
2 BY ATTORNEY STRANG:

3 Q. The area of the four burn barrels, Brutus
4 actually alerted on two of the barrels?

5 ATTORNEY KRATZ: Objection, beyond the
6 scope of redirect.

7 ATTORNEY STRANG: It is, I'm just getting a
8 chance to look at the report. It is beyond the
9 scope of redirect.

10 THE COURT: All right. How many questions
11 are you looking to ask?

12 ATTORNEY STRANG: I think two.

13 ATTORNEY KRATZ: That's fine, Judge, he
14 can.

15 THE COURT: Very well.

16 Q. (By Attorney Strang)~ I have asked one already;
17 he alerted on two of the barrels?

18 A. Yes.

19 Q. And the alerts go with extreme animation and
20 excitement?

21 A. Yes.

22 ATTORNEY STRANG: That's all I have.
23 Thanks.

24 ATTORNEY KRATZ: Nothing further. Thank
25 you.

1 THE COURT: Very well, the witness is
2 excused.

3 THE WITNESS: Thank you.

4 ATTORNEY KRATZ: Can we approach, just
5 briefly, Judge?

6 THE COURT: Sure.

7 (Side bar taken.)

8 THE COURT: Members of the jury, we're
9 going to get started on the next witness, but if you
10 want to stand up and stretch a bit now, you can,
11 that's fine.

12 All right. At this time, Mr. Kratz, you
13 may call your next witness.

14 ATTORNEY KRATZ: State will call Tom
15 Fassbender, your Honor.

16 **SPECIAL AGENT THOMAS FASSBENDER**, called
17 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: Tom Fassbender,
22 F-a-s-s-b-e-n-d-e-r.

23 **DIRECT EXAMINATION**

24 BY ATTORNEY KRATZ:

25 Q. Mr. Fassbender, how are you employed?

1 A. I'm a Special Agent with the Wisconsin Department
2 of Justice, Division of Criminal Investigation.

3 Q. How long have you been a law enforcement
4 official?

5 A. Almost 27 years.

6 Q. What is the Department of Justice?

7 A. The Wisconsin Department of Justice run under the
8 auspices of the Attorney General in Wisconsin.

9 Q. There's a law enforcement branch to that division
10 or department; is that right?

11 A. Yes, that's the Division of Criminal
12 Investigation, DCI.

13 Q. Do you have a specific area of authority with
14 DCI?

15 A. Yes, I'm currently with Special Assignments
16 Bureau within DCI. DCI is broken up into several
17 different areas and bureaus, and that is where I
18 am. And the primary purpose of Special
19 Assignments Bureau, amongst other things, would
20 be homicide investigations or death
21 investigations.

22 Q. And why does DCI typically assist, or why are
23 they assigned homicide investigations?

24 A. Due to the complexity of those types of
25 investigations at times, and with the size of

1 them, and a lot of times you have counties that
2 maybe have one detective or two detectives, and
3 DCI is there to assist in those instances.

4 Q. Is it common for DCI to take over an entire case
5 or does DCI typically help other agencies?

6 A. DCI typically assists.

7 Q. I'm going to direct your attention, Agent
8 Fassbender, to November 5th of 2005, ask if the
9 Division of Criminal Investigation received a
10 call on that day to assist in an investigation?

11 A. Yes, we did.

12 Q. Could you describe for the jury how that
13 happened.

14 A. A sheriff from Calumet County, Jerry Pagel,
15 contacted DCI, I believe the administrator for
16 DCI, and asked for our assistance at that time,
17 which was still a missing persons investigation
18 being conducted.

19 Q. Did you personally respond?

20 A. Yes, I did.

21 Q. And where did you go and what time did you get
22 there?

23 A. I received a call at home. I probably departed
24 that area, or my residence, about 1:00. Picked
25 up another Special Agent and headed to the Avery

1 Salvage Yard, the Avery properties, and probably
2 got there just a little after 2:00 p.m. that day.

3 Q. Sometime at or about 2:00 p.m., were you involved
4 in, that is, did you participate in discussions
5 regarding who was going to lead up or be in
6 charge of this investigation?

7 A. Yes.

8 Q. And could you recount those discussions for the
9 jury, please.

10 A. Upon arrival at that scene, I met with -- I know
11 for sure, Jerry Pagel, the Sheriff of Calumet
12 County. And I was advised that the Manitowoc
13 County Sheriff's Department had asked the Calumet
14 County Sheriff's Department to take the lead role
15 in the investigation.

16 And let me advise that the investigation
17 pertained to Teresa Halbach. And the reason we
18 were at the Avery Salvage Yard was that her
19 vehicle had been found on that property.

20 Q. Did you, on behalf of the Department of Justice,
21 agree to assist and participate in this
22 investigation?

23 A. Yes.

24 Q. As the investigation unfolded, could you identify
25 for the jury other law enforcement officers --

1 excuse me -- other law enforcement agencies that
2 were involved in this investigation?

3 A. Of course Calumet County Sheriff's Department,
4 DCI, Manitowoc County Sheriff's Department,
5 Manitowoc Police Department, Two Rivers Police
6 Department. Some smaller police departments in
7 Calumet County, New Holstein, I think Brillion, I
8 think Kiel. Winnebago County Sheriff's
9 Department with a dive team. Brown County
10 Sheriff's Department assisted in a capacity. I'm
11 not real sure what capacity that was at this
12 moment. FBI has assisted with technical
13 assistance. Marinette Sheriff's Department.

14 Q. That's just the law enforcement agencies?

15 A. Yes.

16 Q. Were there other support agencies that assisted?

17 A. Yes.

18 Q. Name some of those, if you can recall.

19 A. Various fire departments, volunteer fire
20 departments from both Calumet County and
21 Manitowoc County, Great Lakes Search and Rescue,
22 would be an example of who we just heard from.

23 Wrecker services, implement dealerships,
24 citizen search groups, pilots. I -- I imagine I
25 could go on for a little while yet, but I can't

1 think of them.

2 Q. I guess my question, Agent Fassbender, in the
3 over 25 years of experience that you have had,
4 especially in homicide investigations; have you
5 been involved in an investigation with this many
6 agencies and this many resources being assigned
7 to one case?

8 A. No, sir, I have not.

9 Q. You mentioned the Manitowoc County Sheriff's
10 Department's role. As lead investigator, or as
11 one of the two individuals assigning
12 responsibility to allocate all of these resources
13 that we're talking about, could you describe what
14 Manitowoc's role was contemplated to be.

15 A. Yes, it was decided that they would assist in the
16 investigation in a support capacity or an
17 assistance capacity. It was their county. They
18 knew the resources. They had the contacts for
19 such things as wrecker services, implement
20 dealerships, if we needed equipment, and various
21 other things that would have come up, many other
22 things that probably came up during this
23 investigation on scene.

24 Q. Were you able, and have you been able, to attach
25 a number, that is, how many different

1 individuals, both the law enforcement and support
2 services, that were involved in this
3 investigation from start until today?

4 A. A total number?

5 Q. Are you able to do that or not?

6 A. I can get close day by day, but I have never
7 attached a total number, no.

8 Q. The allocation of the resources, the assignment,
9 your decision to assign specific officers to
10 specific duties, how were those decisions made?

11 A. Basically, it was a group decision, as team work.
12 And we had two lead investigators on the case,
13 so-called, myself and Investigator Mark Wiegert
14 from the Calumet County Sheriff's Department.
15 The sheriff was out there. We had other
16 detectives and investigators out there. And what
17 commonly would happen is, like when I got there
18 initially on Saturday, there was a briefing.

19 And I was briefed as to what was
20 happening, what had happened. We would get
21 together and make decisions on where we want to
22 go and what we want to do. After activities are
23 completed, for example, like at the end of the
24 day, we would have a debriefing session where we
25 would meet and we would talk to the

1 investigators, searchers, interviewers,
2 neighborhood canvassers, and try and get a report
3 back on the information that they may have come
4 across or evidence that they may have found. And
5 we digest that, and as a group or as a team, we
6 try and decide what do we want to do next, where
7 we want to go with this.

8 Q. The resources that were available to you, again,
9 whether it's law enforcement, for now let's limit
10 it to law enforcement resources. Did officers
11 that were presented to you, and law enforcement
12 assets that were presented to you, have different
13 levels or degrees of experience in various law
14 enforcement areas?

15 A. Certainly, yes.

16 Q. And was that factored into your decision on who
17 to assign to what task?

18 A. Most definitely.

19 Q. Can you give some examples.

20 A. Obvious example is, if we were going to search
21 for evidence, the location of evidence, which may
22 involve the collection and processing of
23 evidence, I want someone that's trained and
24 experienced in that area to do those searches.

25 In this instance, we had the Crime Lab

1 there on and off at this scene. We utilized them
2 to go to some various areas, or spots where
3 evidence was found, because obviously their
4 people are trained in that area.

5 Q. Are there other -- or are you familiar, as a law
6 enforcement officer and homicide detective, are
7 you familiar with evidence technicians, or law
8 enforcement officers that have that specialized
9 training also?

10 A. Certainly, with most departments, counties,
11 police departments, they have individual officers
12 on their department that have received additional
13 and specialized training in the collection,
14 processing, preservation, etcetera, of evidence.
15 And those are the types of people that -- or
16 officers, excuse me, that we're going to want
17 doing that task.

18 Q. What kind of a case did this start out as?

19 A. Missing person case.

20 Q. And in those very early stages of this
21 investigation, what was your primary goal in the
22 missing persons investigation? Do you understand
23 my question?

24 A. I imagine the primary goal in a missing persons
25 investigation would be to find the missing

1 person.

2 Q. Was that your goal in this case?

3 A. Yes.

4 Q. Now, at some time -- and we're going to hear
5 about the first 11 days or so, in fact, we're
6 going to hear about 15 months worth of
7 investigation, but for the first day, the first
8 hours of this investigation, was your goal
9 different than it became throughout the rest of
10 the week and, in fact, for the last 15 months?

11 A. Yes.

12 Q. How was it different?

13 A. In the fact that we were searching for, and
14 hoping to find, Teresa Halbach alive.

15 Q. Agent Fassbender, decisions that you made in this
16 case, would those decisions, and were those
17 decisions in this case, different when this was a
18 missing persons or searching for Teresa alive and
19 did that change sometime over time? That's a
20 really awkward way of asking that, but are there
21 different decisions that are made when you are
22 looking for a live body, rather than being
23 involved in a criminal ongoing investigation?

24 A. It depends on when you're talking and when I got
25 there, or as opposed to Thursday, when she was

1 first reported missing, there's differences.
2 When I got there, even though we were still in a
3 missing persons capacity, I'm taking on a little
4 different light to this and I'm coming in
5 thinking that something bad had happened.

6 And we do that because we don't -- we
7 don't want to miss anything. We may get one
8 chance at this, and it's easier to prove or
9 disprove that maybe something bad happened than
10 to go the other way and not have the evidence or
11 the scene to work with.

12 Q. I understand. Let's talk kind of globally or big
13 picture about a search plan. First of all, were
14 you one of two law enforcement officials that
15 were directing search efforts in this case?

16 A. Yes.

17 Q. Did you have an overall plan, or an overall
18 search plan for not just the first day, but the
19 first week of this investigation?

20 A. Generally, I think you can have an outline or an
21 overall search plan to start with, but as I
22 mentioned before, it's fluid. It may change
23 depending on evidence found, or information from
24 interviews brought back, or neighborhood
25 canvasses, stuff like that. It needs to remain

1 fluid, you can't have that lock and load
2 mentality and say this is what we're going to do.
3 It may change.

4 Q. Let's talk specifically, then, about your search
5 plan the first day, or even the first hours.
6 What was your first search plan, or your first
7 plan of attack, just after search warrants were
8 obtained from, I think it was Judge Fox in this
9 case?

10 A. Well, number 1, in any investigation, a homicide
11 or death investigation, I should say, is life is
12 first and foremost, always. Check for life, find
13 life, and treat it, even at the cost of maybe
14 losing evidence. So, in this case it was no
15 different. We needed to find, to see if Teresa
16 is on that property and if she's alive.

17 So we organize a sweep. Law enforcement
18 officers, we call it a sweep, but basically what
19 they are doing is sweeping through the buildings
20 on the property to see if Teresa is in any of the
21 buildings. Along with that is also a concern for
22 officer or other people's safety. That's a
23 secondary concern on a sweep, is there anyone
24 else on the property that could be a concern for
25 law enforcement safety. So the sweeps were

1 organized with the law enforcement officers we
2 had present.

3 Q. Is that the first thing that law enforcement does
4 is sweep through these -- talking about the
5 residences now?

6 A. Most always, yes, that's the first thing we do.

7 Q. And what kind of distinction is a sweep versus a
8 search of a property?

9 A. Well, this property was a little different. On a
10 normal death scene, you are sweeping there to
11 check for life and for safety. And maybe you
12 have to bring EMT's in, and other people, a
13 coroner. You can't bring them into that scene
14 unless you know that scene is secure and safe.
15 The same thing here, essentially, to make sure,
16 to the best of our ability, a scene that size,
17 that it's safe and to determine why or if --
18 check to see if we could find Teresa.

19 Q. Was that done in this case?

20 A. Yes.

21 Q. Were all of the residences on the Avery property
22 swept?

23 A. Yes.

24 Q. Were all of the business buildings and other
25 outbuildings swept?

1 A. Yes, sir.

2 Q. After that sweep was performed, and we may get
3 into this after the break, but my last question
4 at least for this part of your examination is,
5 did your search efforts then become more directed
6 or more detailed?

7 A. I'm going to add to my answer here. We had the
8 sweeps, and as we heard already, the dogs were
9 brought in, and a dog was utilized specifically
10 in certain areas, the car crusher, the line of
11 cars along the south berm, some of the
12 residences, and the buildings.

13 Not just one dog, I believe nine dogs
14 were brought in. And then they were also
15 utilized to sweep the property, the vehicles, the
16 salvage yard property, 4,000 plus vehicles. They
17 were working and they were accompanied with law
18 enforcement officers at this time. And then,
19 yes, then we started talking about where are we
20 going to go from here. Are we going to get more
21 detailed or what are we going to do.

22 ATTORNEY KRATZ: With that, then, Judge, I
23 think this is a good time for our morning break.

24 THE COURT: All right. The Court agrees.
25 Members of the jury, at this time we'll take our

1 morning break. I remind you, again, not to discuss
2 the case in any manner during the break. And we'll
3 resume in about 15 minutes.

4 (Jury not present.)

5 Before breaking, the record should
6 request (sic) that the parties requested two
7 brief side bars this morning. The first one was
8 a defense inquiry as to whether or not the State
9 had a copy of Julie Cramer's report, which it
10 turned out they did and that was used.

11 The second more brief side bar was
12 Mr. Kratz asking the Court if we should hold a
13 break or begin Mr. Fassbender's testimony, and we
14 did. Does that reflect counsel's understanding
15 of what transpired?

16 ATTORNEY STRANG: It does. And just so
17 it's clear, we have -- the defense has a copy of
18 that report. I just didn't happen to put it in my
19 file so it's not that it hadn't been turned over, it
20 was.

21 THE COURT: All right. We'll resume with
22 Mr. Fassbender's testimony in 15 minutes.

23 (Recess taken.)

24 (Jury present.)

25 THE COURT: Okay. Mr. Kratz, you may

1 resume your questioning of the witness.

2 ATTORNEY KRATZ: Thank you.

3 **DIRECT EXAMINATION CONTD.**

4 BY ATTORNEY KRATZ:

5 Q. Agent Fassbender, you had previously told us
6 about a search plan or methodology that first
7 includes a sweep securing the area, looking for a
8 live body. And that was, in fact, performed in
9 this case; is that correct?

10 A. That's correct.

11 Q. In your search methodology, after that is
12 completed, that is, after that sweep is
13 completed, what's the next level of searching
14 that you had performed on the 5th?

15 A. At this point, we're probably back at the command
16 center taking in information and briefing each
17 other. I know we still had dogs searching the
18 salvage yard, perimeters of buildings, at that
19 time.

20 The Wisconsin State Crime Laboratory
21 from Madison, Wisconsin, had been called earlier
22 on and had arrived at the scene, somewhere around
23 4:00 in the afternoon probably. And they were --
24 although they went to some different areas on the
25 property there, their primary purpose was to

1 process and take care of the RAV 4 that was found
2 on the property, Teresa's SUV.

3 While that was going on, a decision was
4 made to start the search of the buildings,
5 residences, and a team, a evidence location
6 collection processing team, was put together to
7 start that process. With the individuals we had
8 -- or the personnel we had on site, we were able
9 to come up with one team of four individuals to
10 start that process. And they started at Steven
11 Avery's trailer down at the end of the driveway
12 to the west, and they started that about 7:30.

13 Q. Before we get into individual searches, Agent,
14 I'm wondering if we can talk, at least in more
15 general terms, as to your search plan, or your
16 search methodology, not necessarily where
17 specific places were searched, but if there was,
18 in fact, a generalized search plan?

19 A. Well, certainly. And in death investigations
20 normal scenes, generally, like I said before, we
21 determine if there's life and if there's a
22 deceased or a corpse on the scene.

23 After that, you secure the scene and
24 limit, generally, the number of people that go
25 into that scene. Secure evidence, look for

1 evidence, possible witnesses at the scene that
2 you may want to speak to or detain immediately,
3 so you don't lose them, and get a search warrant.

4 And in this case, we basically did those
5 things, maybe a little different. We got the
6 search warrant. And, again, generally, in a lot
7 of these scenes, you don't necessarily know
8 exactly what you're looking for, maybe on the
9 first search.

10 This scene is definitely that way. We
11 don't even have a body, so to speak. So we're
12 not real sure, exactly, what we're looking for.
13 It behooves us to send investigators into these
14 searches because they are familiar with these
15 types of investigations a lot times and they may
16 have a better knowledge about things that might
17 be evidentiary in value.

18 I think about an investigation I did not
19 too long ago where we did the same thing. And
20 this death investigation there was a corpse on
21 the scene, and we got a search warrant, we went
22 in and did a search of this building. It was a
23 trailer, very similar to the ones that we were
24 dealing with on this scene. And the deceased --

25 ATTORNEY BUTING: Your Honor, I'm going to

1 object if we're going to be talking about a
2 different case. I think we need to focus on this
3 case rather than start describing what searches do
4 or don't occur in other cases.

5 THE COURT: Mr. Kratz.

6 ATTORNEY KRATZ: Judge, certainly the
7 methodology, I expect there's going to be questions
8 by defense counsel as to why this took so long. If
9 they aren't going to question, then I will stop
10 right now with this line. If there is going to be
11 cross about that, I think the jury is entitled to
12 know.

13 THE COURT: Because the question relates to
14 why the witness did what he did, I'm going to allow
15 a little latitude and allow him to answer the
16 question.

17 ATTORNEY KRATZ: Thank you, Judge.

18 Q. (By Attorney Kratz)~ Go ahead.

19 A. I'm just using this as an example, when you have
20 a piece of evidence. Well, the body is a piece
21 of evidence, it gets sent to autopsy. We get a
22 search warrant, we hold the scene, we conduct a
23 search, not necessarily knowing what we are
24 looking for for sure. We get intelligence back.
25 And this example, we get information back from

1 the pathologist.

2 And in this case the pathologist told us
3 to look -- it was a bludgeoning death and a
4 stabbing death -- to look for this type of knife,
5 with this many serrations and a crowbar that was
6 used, this type of information that they can find
7 out. And thus we ended up holding this scene
8 three or four days because we're getting
9 information back. We like to do that because it
10 can assist in our search. It can narrow our
11 scope of search. So a lot of times what I'm
12 getting at is a search may start out fairly broad
13 and maybe not knowing exactly what we're looking
14 for, but it narrows as we move along. Hopefully
15 get more intelligence and information.

16 Q. Is there a term that goes along with this kind of
17 a search methodology?

18 A. You could call it funneling, a funnel approach.

19 Q. Exhibit 86, which is on the board, do you
20 recognize that scene?

21 A. Yes, I do. That's the Avery Salvage Yard, along
22 with some residences.

23 Q. Was one of the residences on the salvage yard
24 that residence of Steven Avery?

25 A. Yes, 12932 Avery Road.

1 Q. Do you know what township that's located in?
2 A. Gibson?
3 Q. Gibson?
4 A. Gibson Township.
5 Q. Do you know what county that's in?
6 A. Manitowoc.
7 Q. And State of Wisconsin?
8 A. Yes.
9 Q. At the early stage of this proceeding, that is on
10 the fifth of November, when you arrived on the
11 scene, and when you were directing the searches;
12 was Mr. Avery, the defendant, Steven Avery, a
13 person of interest in this investigation?
14 A. When I arrived on scene on Saturday?
15 Q. Yes, and throughout the rest of the 5th?
16 A. Yes.
17 Q. Why?
18 A. Because of a lot of things, information that had
19 been developed. First and foremost, an
20 investigation like this, when I go in, who last
21 saw the person. That's just common sense, who
22 last saw the person. So that was the primary
23 reason that he would have been a person of
24 interest.
25 Q. All right. You talked about the specialization

1 that some law enforcement officers needed. I
2 think you mentioned both evidence detection or
3 collection, or processing. After that occurs, is
4 it common for evidence to be sent elsewhere for
5 further examination?

6 A. Yes.

7 Q. What kinds of places is evidence sent for further
8 examination?

9 A. Any number of places. The primary place that we
10 would send evidence to is the Wisconsin State
11 Crime Laboratory in Wisconsin, either Madison,
12 Milwaukee, or Wausau. The FBI laboratories could
13 be used, private laboratories could be used,
14 specialists like forensic anthropologists could
15 be used.

16 Q. Agent Fassbender, you used the term that I have
17 been asked to have you further explain, and
18 that's a search warrant. Tell the jurors or
19 those of them that may not know, what is a search
20 warrant?

21 A. A search warrant is, essentially, an order signed
22 by a judge, directing law enforcement to search,
23 essentially, a person, a place, or a thing, for
24 items of property, or items, and then forthwith
25 bring those items back before the court. On a

1 search warrant, you have five days to execute the
2 search warrant from the date it was delivered,
3 and returned.

4 And after the search warrant is
5 executed, you have 48 hours, normally it's looked
6 at as business hours, to return that search
7 warrant to said court with an inventory of items
8 that were seized as evidence.

9 Q. And you mentioned in this case that a search
10 warrant had been obtained, in fact, more than
11 one?

12 A. Yes. And I neglected to say search warrants
13 based on probable cause by a law enforcement
14 officer to believe that those items of property
15 are where you are looking. And that's through a
16 written affidavit, or testimony, or even
17 telephone or radio.

18 Q. As one of the lead investigators, I think you
19 said that you were involved in directing search
20 efforts on this property; is that right?

21 A. Yes.

22 Q. Were there areas that you were directing
23 searches?

24 A. Yes.

25 Q. Other than search efforts, this -- I mean,

1 globally, this investigation, did it include
2 things other than searching the Avery property?

3 A. Yes. We had not only the Avery property and the
4 size that we were dealing with there, and the
5 items that we were dealing with there, we also
6 had, up in Marinette County, where Mr. and
7 Mrs. Avery have land in that area, and some of
8 the family was up there that first weekend, that
9 we were dealing with.

10 Some of our DCI agents went up there,
11 and Marinette County detectives were also up
12 there. We were down in Milwaukee dealing with
13 Auto Trader. We were running around, even
14 Manitowoc County, or other counties, to some
15 salvage yards. So, it could -- and a lot of
16 investigations do that -- they can stretch, you
17 know, from one end of the state to the other at
18 times.

19 Q. All right. Were interviews being conducted in
20 those various locations?

21 A. Interviews were being conducted in many
22 locations.

23 Q. Now, this is all happening at the same time as
24 the search efforts; is that right?

25 A. Yes.

1 Q. Though some of the resources that you had to
2 allocate, in other words, direct?

3 A. Yes.

4 Q. Steven Avery, the only person being investigated?

5 A. No.

6 Q. Explain that.

7 A. We go into an investigation and, like I said, I
8 think I used the term before, you are not going
9 to lock and load. You are going to listen to all
10 the intelligence and information being brought
11 in. Look at all the evidence. You are there to
12 find the truth. That's what we go there for, is
13 to find the truth.

14 And the object is to allow the evidence,
15 and the facts that are uncovered as you go along,
16 to lead you to the most logical suspect. So, I
17 don't go in with necessarily one person I think
18 definitely did it. There's definitely reasons
19 and intelligence to point maybe in a direction
20 and you follow that direction.

21 Q. I think you mentioned before, the last person to
22 see her alive, obvious place to start; is that
23 right?

24 A. Well, certainly.

25 Q. We heard yesterday, or perhaps it was the day

1 before, about perimeter or scene security. Can
2 you mention that just briefly, or discuss that
3 just briefly?

4 A. When you get to a scene like that, or a death
5 scene, it behooves you to secure the scene right
6 away, to allow, or to not allow, let's say
7 citizens or even officers that shouldn't be
8 coming into that scene. We put on a desk
9 investigation school, one of the things we always
10 say is, you know, the sheriff, the chief is going
11 to want to get into that scene, they always want
12 to.

13 Don't let them in. The less people you
14 have in that scene, most often the better,
15 because you are not affecting evidence that might
16 be in that scene. So you secure that scene, you
17 put up a perimeter, and you try and protect it.

18 Q. You talk about scenes, and I just want to
19 distinguish this case from a typical -- if there
20 can be a typical homicide investigation or a
21 homicide that occurs in somebody's apartment.
22 Can you distinguish this kind of case from that?

23 A. I don't know if I really have to. It's an
24 outdoor scene, with indoor locations, with
25 buildings and stuff, and you have 15 buildings on

1 that property. You have got 40 acres to search.
2 Forty acres in and of itself is going to be very
3 difficult, but add 4,000 plus cars to that, 54
4 crushed cars, multiple individuals and people to
5 interview, it is not a normal scene.

6 Q. All right. Agent Fassbender, Lieutenant Bowe
7 talked about a command center; are you familiar
8 with the command center that was established
9 here?

10 A. Yes.

11 Q. Can you describe how that was set up.

12 A. Initially, a Manitowoc County -- I think maybe a
13 HazMat Unit, it's kind of like a big RV, in a
14 sense, with an office in it and capable of
15 setting up phones and computers and fax, I
16 imagine, was brought to that scene. And then
17 after that, Calumet County brought a trailer, and
18 their Command Post to that scene and then we were
19 operating out of both of those locations. And
20 that location being at the end of Avery Road,
21 right in that area where the road ends, the
22 pavement ends, right in that area.

23 Q. Being one of the lead investigators, were you
24 familiar with the efforts, not only the search
25 efforts, but the investigative efforts that

1 occurred during the first eight days of this
2 case?

3 A. Yes.

4 Q. Let's start then with the first day, on
5 November 5th. We have heard about how you became
6 involved, how a search warrant was obtained, how
7 a sweep occurred. We heard briefly about the
8 dogs that were brought in. But you said that
9 there were nine canine units. Can you tell the
10 jury where they were deployed or where they were
11 searching?

12 A. The canine units were a mix. They weren't all
13 so-called cadaver dogs. Some were mixed trained,
14 some were more like bloodhounds, live search
15 dogs. Initially, just one was brought in, but
16 then after Brutus got done with his initial
17 search, the rest were brought in. And the
18 primary focus to start with, was to search the
19 salvage yard in and around the vehicles, in that
20 40 acre area.

21 Q. Can you show, in Exhibit No. 86, what you are
22 talking about?

23 A. Well, essentially, what I'm talking about is the
24 salvage yard area where these dogs had to search.
25 That may have included these cars, may have

1 included the impound area also. Due to weather
2 concerns and darkness, they actually came back to
3 complete that search.

4 Q. Let's talk about the weather. Do you remember
5 the weather on the 5th?

6 A. Oh, yes.

7 Q. Tell -- Tell the jury about that.

8 A. Initially, it was predicting -- the weather was
9 predicted to be bad. Rain, storms moving in. As
10 a result I was in contact with the Crime
11 Laboratory, and we decided to try and place a
12 tarp over the RAV 4 SUV, not touching it, but
13 place it over and suspend it, which we did.

14 And then it started to sleet, maybe a
15 light rain, but the wind really picked up at this
16 time. And we ultimately ended up removing that
17 tarp because it was starting to let loose and it
18 appeared that it was going to affect the debris
19 that was used to conceal the car and we didn't
20 want to do that. So we just had to live with it.

21 Then it stopped raining. But then
22 somewhere -- my best guess right now is right
23 after dark, or after dark, it stormed. It was
24 torrential downpour the rest of the night. We
25 got some rain. It filled up that pond down there

1 by the SUV, which was dry at the time, and it
2 stormed very bad.

3 Q. Were you involved in observing Brutus and Brutus
4 working that area that Ms Cramer talked about?

5 A. Yes, I was.

6 Q. Tell us what you recall seeing?

7 A. Brutus came down and started near the car crusher
8 in the salvage yard and worked that area first.
9 And then Brutus worked to the south, southeast
10 corner of the salvage yard, in that area.

11 And then along the southernmost edge of
12 the property or berm there. There's a row of
13 cars along that area and Brutus worked along that
14 area. We were advised by Brutus' handler, prior,
15 what Brutus would do if he was alerted on a
16 vehicle. And when Brutus approached the RAV 4
17 SUV, it became apparent, even to me, that Brutus
18 had alerted on that vehicle, going to the vehicle
19 and going back and sitting in front of Julie and
20 barking.

21 Q. Agent Fassbender, you testified that you got
22 there about 2:00 in the afternoon; is that right?

23 A. About, yes.

24 Q. And we have heard other law enforcement officers
25 testify to this, but I'm going to ask you the

1 same questions. Any time after 2:00 p.m., did
2 you see any law enforcement officer or citizen
3 enter that RAV 4 vehicle?

4 A. No.

5 Q. Did you see any law enforcement officer disturb
6 or tamper with anything around there that would
7 have been of obvious evidentiary value?

8 A. No.

9 Q. Is that important to you?

10 A. Yes.

11 Q. Why?

12 A. Because that's probably, right now, our main
13 piece of evidence in this case.

14 Q. You mentioned that the Crime Lab was called in;
15 is that right?

16 A. Yes.

17 Q. How come?

18 A. I didn't request the Crime Lab, but if I go to
19 death scenes, I always request, or request the
20 agents I'm working with, to bring the Crime Lab
21 in. They are essentially our evidence techs.

22 Q. In front of you, Agent, are some photos. We're
23 going to walk through those for the jury. First
24 photo is Exhibit No. 395. Tell us what that is,
25 please.

1 A. Exhibit 130 you mean?

2 Q. I'm sorry, yes.

3 A. Exhibit 130, it's almost dark, looks duskish, and
4 it's a photograph of the condition of the RAV 4
5 SUV when it was found. There's some people near
6 the scene, one of them is myself, one is a deputy
7 with Calumet County, and one of them is, the ones
8 I can see, and one of them is a forensic
9 scientist with the Crime Laboratory.

10 Q. You are in that photo?

11 A. Yes.

12 Q. And do you recognize that scene?

13 A. Yes.

14 Q. I'm showing the jury, now, Exhibit No. 130. Tell
15 the jury what we're looking at, please.

16 A. Again, that's the -- Teresa's RAV 4 SUV, parked
17 facing in a westerly direction along that
18 southern berm of the salvage yard. With the
19 debris, trees, pieces of wood, cardboard,
20 plywood, a vehicle hood on, or around, or leaning
21 against the SUV, and then the individuals there.
22 Myself is in that red jacket. We're law
23 enforcement or Crime Lab personnel.

24 Q. Point to the Crime Lab people, if you can?

25 A. Right there, the nice way to say it, the person

1 with less hair, was a Crime Lab person, and then
2 myself.

3 Q. Do you know what his name is?

4 A. John Ertl. And then the deputy from Calumet
5 County. And I think that's a Crime Lab personnel
6 also, I'm not sure.

7 Q. When you got there, again, we have heard this
8 before, but was this vehicle being watched or
9 guarded?

10 A. Yes.

11 Q. To your knowledge, from your arrival, since
12 that's all you can testify to, from 2:00 p.m.
13 until the Crime Lab arrived, was it continuously
14 watched by law enforcement officers?

15 A. I arrived and I went to the Command Post first,
16 right after 2. I probably got down into the area
17 by the crusher a little later, maybe 2:20, 2:25.
18 From that point on I could say, yes, it was.

19 Q. Why didn't you or other law enforcement officers
20 on the scene enter that vehicle or process it
21 there?

22 A. Much safer to really, especially with a vehicle,
23 an outside setting like that, with pending
24 weather, to just secure the vehicle, put it in a
25 closed trailer, let the Crime Lab do their thing.

1 Take it down to the Crime Lab and process it
2 there, rather than trying to process this out in
3 those conditions outside.

4 Q. Is that what was done?

5 A. That's what was done.

6 Q. Did anybody, Crime Lab members included, enter
7 that vehicle out at the scene?

8 A. Not that I'm aware of, no.

9 Q. What was done with the vehicle, if you know, and
10 were you involved in that?

11 A. Yes, I was involved in that, to a degree.

12 Probably about 7:30-ish, that evening, with the
13 rain coming down, I was asked to take the wrecker
14 service, Rabas Wrecker Service, down to the area
15 by the car crusher. Another, I guess, wrecker
16 service was also there, Pethan -- Pethan, out of
17 Calumet County. They had an enclosed trailer
18 that could carry vehicles. They were also there,
19 came down to that location.

20 At that point, the Crime Lab personnel
21 that were there accompanied the wrecker operator
22 over to the RAV 4 location where they hooked up
23 the RAV 4 and towed it back to the location by
24 the car crusher, where the enclosed trailer was
25 waiting, and they backed it into that enclosed

1 trailer and secured it in that enclosed trailer.

2 They also took some of the items like
3 the vehicle hood and put that in there. They
4 examined a lot of the remaining items to see if
5 there was any obvious evidentiary value on those
6 items, and ended up not taking most of those
7 items.

8 Q. I'm going to show you some of those things.
9 What's Exhibit 131? Let's get through these
10 pictures first.

11 A. 131 is a photograph of the hood and windshield
12 area of the RAV 4 SUV. It depicts the branches,
13 and trees, and a cardboard box that had been
14 placed on top of the hood of that vehicle.

15 Q. Now that the jury can see 131, is that debris the
16 way it looked the evening of the 5th of November.

17 A. Essentially, the wind may have moved some things,
18 or the rain may have moved some things a little.

19 Q. What's 132?

20 A. That's a photograph, again, of the SUV. This
21 photograph is taken toward the passenger front
22 quarter panel or quarter area of the vehicle,
23 again, showing -- looks like a fence post or two
24 and a piece of cardboard up against the RAV 4.

25 Q. Now see Exhibit 132, is that the image that you

1 are looking at?

2 A. Yes.

3 Q. What's 133?

4 A. 133 is a picture of the RAV 4. This would be the
5 driver's side rear quarter panel area of that
6 vehicle.

7 Q. Is that Exhibit 133?

8 A. Yes.

9 Q. Now, these appear to be taken after darkness; is
10 that right?

11 A. Yes.

12 Q. What's 134?

13 A. A picture of the RAV 4 SUV, similar to two
14 exhibits ago, the passenger side a little more
15 inclusive showing, again, the fence post,
16 plywood, and debris.

17 Q. And here is 134. And I understand that this gets
18 a little bit tedious or monotonous, but do some
19 of these angles or the different shots become
20 important in not only this investigation, but in
21 most investigations?

22 A. Certainly.

23 Q. What's 135?

24 A. 135 is a picture of the rear portion of the RAV
25 4, again, showing some of the debris, fence post,

1 trees, leaning up against the RAV 4 and that is
2 it.

3 Q. 136?

4 A. A picture of the RAV 4 coming at the passenger
5 rear corner so you can see the rear of the RAV 4.
6 And then the passenger side, although you can't
7 see most of it because of the fence post and a
8 vehicle hood leaning up against that portion.

9 Q. Before I leave 136, I'm sorry, if you can refer
10 to this exhibit, do you see any rear license
11 plates if you look at the screen, Agent
12 Fassbender?

13 A. No.

14 Q. Where would the license plates be?

15 A. Where would they be?

16 Q. No, I mean, where should they be on this vehicle?

17 A. To the left of the spare tire there and just
18 below it.

19 Q. Can you point with the laser pointer.

20 A. Certainly, right there.

21 Q. It's obvious from 136 that they are missing?

22 A. Yes.

23 Q. Here is 137. I think you described that. What's
24 138?

25 A. I don't know if I did do 137. I thought I had

1 done 136. 137 is a picture of the passenger side
2 of the RAV 4 and, again, depicting the hood, the
3 plywood, and some tree material, branch material.

4 Q. So this is 137?

5 A. Yes.

6 Q. All right. What's 138?

7 A. 138 is the passenger side front fender area of
8 that same RAV 4 and, again, you can see some of
9 the debris and articles apparently used to
10 conceal it.

11 Q. Is that 138?

12 A. Yes.

13 Q. And, finally, 139?

14 A. I don't know that I have a 139.

15 Q. I'm sorry, it goes to 138. All right. After the
16 RAV 4 was loaded onto the enclosed trailer, was
17 that trailer secured to your knowledge?

18 A. Yes.

19 Q. How was the vehicle -- By the way, were you
20 present for the loading of the vehicle?

21 A. Yes.

22 Q. How was it loaded on the vehicle, was it started
23 up or something?

24 A. No, the wrecker operator backed it into that
25 trailer. There was a ramp set out and the

1 wrecker operator backed it right up into that
2 trailer and then it was secured.

3 Q. Agent Fassbender, you talked about some residence
4 searches occurring that first night, that is, the
5 5th; were those occurring while this SUV was
6 being processed?

7 A. Yes, sir.

8 Q. Do you know, or can you tell the jury, what
9 residence searches were ongoing?

10 A. The residence at 12932 Avery Road, which was the
11 residence of Steven Avery.

12 Q. Back to Exhibit 86, which I'm sure we'll use a
13 lot, in the lower right hand corner of that
14 exhibit?

15 A. Yes, the lower right hand corner right there,
16 which would be the northeast section of the
17 entire property.

18 Q. Now, you talked about a sweep --

19 A. Northwest.

20 Q. I'm sorry. You talked about a sweep of that
21 residence; is this search that you are now
22 describing something different?

23 A. Yes.

24 Q. How is it different?

25 A. This search is a search that's organized more for

1 the location or finding of things of apparent or
2 obvious evidentiary value, things that are in the
3 search warrant, or asked for in the search
4 warrant. Again, we're not exactly sure,
5 precisely sure, what we might be looking for at
6 this time either.

7 Q. Was a search team put together to search that
8 residence?

9 A. Yes.

10 Q. And do you know how individuals were selected for
11 that search team?

12 A. Yes.

13 Q. Tell us about that.

14 A. We were looking for individuals who preferably
15 were investigators or detectives and who had
16 training, experience, and expertise in the
17 location of and the processing of evidence.

18 Q. Were some of those officers or evidence techs on
19 scene; in other words, were they at the location?

20 A. Yes.

21 Q. Were some of them Calumet County officers?

22 A. Yes.

23 Q. Were some of them Manitowoc County officers?

24 A. Yes.

25 Q. We might as well address this right now, Agent

1 Fassbender, did you, as a lead investigator in
2 this case, have hesitancy in assigning any
3 Manitowoc County sheriff's officer to any tasks
4 at that scene?

5 A. No, absolutely not.

6 Q. Tell the jury why.

7 A. They were there to assist us. In fact, some of
8 the people that actually worked on those teams, I
9 have trained and I have worked with. And the
10 people that we're talking about that would have
11 worked on these scenes, were law enforcement
12 officers, were very professional and did a good
13 job.

14 Q. You talked about resource allocation, were
15 evidence techs at a premium at that scene?

16 A. Yes.

17 Q. What does that mean?

18 A. People who -- Again, officers who have been
19 trained and have experience in processing,
20 locating, preserving evidence. You know, a lot
21 of departments may have only one of those people,
22 two of those people. We had a huge scene here
23 and most officers don't have that level of
24 expertise. And at a homicide scene, that is the
25 level of expertise I want processing my evidence.

1 Q. You had mentioned, just previously, that after
2 the weather turned really nasty, efforts were
3 suspended that evening?

4 A. The majority of the outside efforts were
5 suspended, that's correct.

6 Q. All right. The search inside of Steven Avery's
7 residence that -- or that continued?

8 A. That continued to about 10, if I remember right.

9 Q. After 10:00 p.m., what happened?

10 A. Most people -- I shouldn't say most of the
11 people, people involved in the searches met back
12 at the command center where we debriefed, where
13 we talked about what had happened, what we
14 learned that day, what was found for evidence.

15 Q. Anything else happen on the 5th, of substance?

16 A. The RAV 4 was transported to the Crime Lab in
17 Madison, Wisconsin.

18 Q. All right. Let's move to the next day, then,
19 Sunday, the 6th; do you recall that day?

20 A. Yes.

21 Q. Could you just, in an outline form, tell the jury
22 what investigative efforts occurred on Sunday,
23 the 6th?

24 A. Dogs came back to the scene. There was a lot
25 more to search, but they were concerned that

1 because of the rain, that they wanted to do it
2 again, or make sure they covered every place in
3 this property.

4 So they came back. I believe eight dogs
5 this time, came back to that scene, finished the
6 salvage yard area, went around the
7 perimeter building -- perimeters of buildings,
8 etcetera. Also brought in that day were
9 somewhere in the vicinity of 45 to 50
10 firefighters. And we utilized them to get into
11 the salvage yard and look into locked areas or
12 locked containers: Trunks, hoods, any other
13 places that we needed to get open to look, to see
14 if there was a person in there, a body.

15 Those teams were formed with law
16 enforcement presence; in other words, there's a
17 law enforcement officer with each team of
18 firefighters that went into the salvage yard.

19 Q. Was it your understanding that all 4,000 of these
20 vehicles were individually searched, that is, the
21 trunks were searched that Sunday?

22 A. Yes. So that was -- the main manpower went to
23 that purpose. Also on Sunday, we had the luxury
24 of forming essentially two, three, evidence
25 processing teams. We had a similar team that we

1 had the night before.

2 We had an additional team utilizing some
3 Manitowoc police -- Manitowoc City Police
4 evidence technicians and investigators, and we
5 were able to get the Crime Lab to come back that
6 afternoon, also, for additional processing.

7 Also during this time, just like
8 Saturday, there were numerous interviews and
9 follow-ups going on at the same time.

10 Q. Were there any firearms or guns seized that day?

11 A. Yes. The previous evening, the search of Steven
12 Avery's residence, during the debriefing at the
13 end of the evening, the technicians that were in
14 his trailer informed us that they had seen some
15 guns in there, informed us what they had taken
16 and what they had seen. They didn't seize the
17 guns.

18 They informed that there was a vacuum
19 cleaner. They took the bag out of the vacuum
20 cleaner. They informed us about a carpet cleaner
21 and some other things. It was determined at that
22 time we're going to go back in there and get some
23 of those items, the guns, the two rifles. We
24 wanted the vacuum cleaner because of the rotating
25 brush, the carpet cleaner, some bedding. So,

1 yes, there was, and we did reenter that trailer
2 to get those items.

3 Q. I think Officer Bowe, yesterday, talked about
4 dive teams or teams searching ponds; did that
5 occur that day?

6 A. Yes. We had the Winnebago County Sheriff's
7 Department Dive Team on that day also.

8 Q. Are you familiar with the residence of
9 Mr. Avery's sister, Barb Janda?

10 A. Yes, I am.

11 Q. I'm going to have you look at Exhibit 86 again,
12 tell the jury where is that property.

13 A. That property is right here, which would be
14 almost directly east of the Steven Avery
15 property. And then next to that residence is her
16 unattached garage.

17 Q. On that Sunday, that is, on the 6th, was any
18 property recovered or seized from outside of, or
19 near, Ms Janda's property?

20 A. Yes.

21 Q. What was that?

22 A. That was some burn barrels, four burn barrels,
23 that were located behind her residence.

24 Q. About where, can you show us?

25 A. I think right there, which would be from her

1 residence, in a southeasterly direction, about --
2 I don't know, 100 feet maybe.

3 Q. All right. Let me just stop you right here.
4 This is the first full day, but the second day of
5 search. Did you have an idea, as a lead
6 investigator, yet, what you were looking for?

7 A. No, not entirely. If I might?

8 Q. Go ahead.

9 ATTORNEY BUTING: Judge, objection to the
10 witness narrating on his own.

11 THE COURT: I guess it depends if what he's
12 about to say is in additional response to the last
13 question, or simply random thought.

14 ATTORNEY KRATZ: I suspect this isn't
15 random, is it?

16 THE WITNESS: No.

17 ATTORNEY BUTING: The proper way would be
18 to place a question to the witness.

19 THE COURT: Mr. Kratz.

20 Q. (By Attorney Kratz)~ Can you elaborate on your
21 last answer, Investigator?

22 A. I believe you asked me about knowing what we were
23 looking for. And elaborating on that answer, we
24 had reason, sometimes, to go where we went. The
25 barrels for example, the dogs had alerted on the

1 barrels, so we knew that we wanted to go there.

2 Q. All right. Now, were all of these items, that
3 is, the items that were seized, and the places
4 that were searched -- or searched, included in
5 this judicial authorization, this thing that you
6 called a search warrant?

7 A. Yes.

8 Q. You said the Crime Lab remained on the scene, or
9 came back to the scene on Sunday; is that right?

10 A. They came back to the scene Sunday afternoon.

11 Q. Were they given some specific responsibilities or
12 specific places to search?

13 A. Yes. They were essentially kind of like a roving
14 evidence team, places where the dogs may have hit
15 on, or where searchers found what they thought
16 might be evidence. A lot of times, that's where
17 we would send them, to look at that, or process
18 it, if necessary.

19 Q. All right. Were there other residences and
20 buildings searched that day?

21 A. Yes.

22 Q. Can you tell us about those.

23 A. We had a search team search the garage, the
24 unattached garage next to Steven Avery's house.
25 We had a team that went through Barb Janda's

1 house and her garage. We had a team go through
2 the unoccupied or abandoned trailer along the
3 driveway going toward Ms Janda and Steven's
4 house. A team went through Mr. and Mrs. Avery's
5 residence and garage.

6 Q. Allen and Delores?

7 A. Yes. A team went through Charles Avery's
8 residence and garage. And teams also went
9 through all of the outbuildings, in the northeast
10 section of the property, associated with the
11 business.

12 Q. All of that happening at the same time that the
13 law enforcement and firefighters are opening
14 every trunk?

15 A. Yes.

16 Q. Is there anything happening on Sunday, off site;
17 in other words, off of this property included in
18 your investigation?

19 A. Yes. Up in Marinette, we were interviewing
20 members of the family up there. I believe it was
21 Sunday that two vehicles were seized up there. A
22 flat bed truck from the business, and Steven
23 Avery's car, were seized and taken to the police
24 department or the sheriff's department up there.

25 We had agents and detectives doing

1 interviews, neighborhood canvasses. Neighborhood
2 canvasses are essentially someone going around to
3 residences in the neighborhood, businesses,
4 whatever might be, and asking questions about
5 whether they saw or heard anything.

6 Q. So all this is happening at the same time?

7 A. Yes.

8 Q. It's your responsibility to kind of coordinate
9 all this at once?

10 A. Myself and Investigator Wiegert.

11 Q. So the jury is clear, did you receive assistance
12 and direction, not only from other law
13 enforcement, but other legal authority at that
14 time?

15 A. Yes.

16 Q. Who else was involved?

17 A. Well, we were working with the District
18 Attorney's Office, Calumet County District
19 Attorney's Office.

20 Q. Me?

21 A. Yes.

22 Q. Okay. The search warrants, that is, the request
23 and the authorization by judges, when you
24 received them, is that something that you
25 prepared, or something that somebody else

1 prepared?

2 A. That's something that someone else prepared.

3 Q. Who typically would prepare them?

4 A. Either the District Attorney, Assistant District
5 Attorney, or their staff.

6 Q. All right. Agent Fassbender, then, did anything
7 else, at least that sticks out in your mind,
8 occur on that Sunday, the 6th?

9 A. That night, before the Crime Lab retired for the
10 evening, we asked them to go back into the
11 residence of Steven Avery. The reason we did
12 that is, we had found what appeared to be blood
13 in there, the previous evening.

14 And they went in there to look at the
15 blood patterns. As a result of doing that, they
16 identified some potential blood that needed to be
17 processed yet, and they advised us of that during
18 the debriefing that evening.

19 Q. This was a Sunday; is that right?

20 A. Sunday, yes.

21 Q. Is anything else going on at the State Crime Lab
22 as far as you know, on that Sunday?

23 A. Yes.

24 Q. What was that?

25 A. The RAV 4 vehicle had already been down there --

1 ATTORNEY BUTING: Objection, your Honor.
2 This witness can't testify what's going on some
3 place two hours away.

4 ATTORNEY KRATZ: It's certainly not for the
5 truth, Judge, it's did this officer do anything in
6 response to that.

7 ATTORNEY BUTING: That's fine.

8 THE COURT: All right. For that purpose, I
9 will allow it.

10 A. I was informed that day, that to an initial
11 processing of that vehicle, that they had
12 received a positive test for the presence of
13 blood in that vehicle.

14 Q. All right. And did that further direct your
15 search efforts and where to look and what you
16 were looking for?

17 A. Yes, certainly, to a degree.

18 Q. Let's move to Monday, the 7th of November. Tell
19 the jury how this search effort progresses,
20 please.

21 A. Okay. Monday, again, we started early in the
22 morning. Volunteer firefighters are utilized,
23 again. I believe we have about 60 of them on the
24 scene this day. Coupled with about 20 law
25 enforcement officers, the majority being from the

1 Manitowoc Police Department, some from Two Rivers
2 Police Department, a few from Manitowoc County,
3 DCI agents, and Calumet County. Calumet County
4 had -- this was a day that they brought over
5 jailers and dispatchers to assist in the search
6 effort.

7 And, again, what happened this day was a
8 good majority of the -- I believe the Mishicot
9 Fire Department volunteers, along with DCI agents
10 and possibly some law enforcement officers, went
11 down by the crusher. And there were about 54
12 crushed cars down there. And they methodically
13 went through everyone of those crushed cars,
14 apparently ripping off the roof of those cars and
15 any closed areas to search those cars.

16 After searching them, they had like a
17 front end loader down there with forks on the
18 front, I believe. And they moved the cars from
19 the south side of that car crusher over to the
20 north side, when they were done searching it.
21 They had these tools to get into this and enable
22 them to do this, whether it was Jaws of Life or
23 cutting tools.

24 Q. You said that 54 crushed cars were near the car
25 crusher; is that right?

1 A. That's my knowledge, yes.

2 Q. And understanding that all 54 were searched?

3 A. Yes.

4 Q. Do you know what they were looking for?

5 A. Well, obviously, a body, or any indications of
6 such, clothing or other things that were in the
7 search warrant.

8 Q. Was anything at least brought to your attention,
9 as the lead investigator, found in the search of
10 those 54 crushed vehicles?

11 A. No, sir. May I continue with Monday then?

12 Q. Counsel may want me to do this a little bit more
13 question and answer, so I will interject a couple
14 of questions. Were there on site and off site
15 teams that were formed that day?

16 A. Yes.

17 Q. Did any of the off site teams move towards, at
18 least in their search efforts, towards the 40
19 acre Avery property?

20 A. I'm not sure I understand. But along with the
21 teams that did the crushed cars, firefighters and
22 law enforcement, again, coupled up into teams.
23 And there was law enforcement with each team of
24 firefighters and they were searching the
25 perimeter of this area, this 40 acre area, just

1 outside the perimeter and in that area, and
2 working their way either toward, depending where
3 they started, or away from the property. Again,
4 looking for anything that might be of obvious
5 evidentiary value.

6 Q. Did they find anything, that you are aware of,
7 that had obvious evidentiary value?

8 A. Yes.

9 Q. What was that?

10 A. Toward the northwest section of the property,
11 just north of Steven Avery's residence, there was
12 a burn barrel located. One of these search teams
13 found that burn barrel. Inside that burn barrel
14 was a wheel -- not the tire, but the axle -- or
15 the rim part of the wheel. They looked under
16 that.

17 ATTORNEY BUTING: Judge, objection, to what
18 they did or didn't do, if he is not there. These
19 witnesses will be testifying later. I think he can
20 describe this without getting into that kind of
21 detail.

22 ATTORNEY KRATZ: I think that's fair,
23 Judge. I will have him refer to the exhibit and
24 tell me what he saw.

25 THE COURT: I agree. The objection is

1 sustained.

2 Q. (By Attorney Kratz)~ In looking at Exhibit 37
3 that's on the screen, is this the burn barrel
4 that you are talking about?

5 A. Yes.

6 Q. Can you point to it with the laser pointer.

7 A. Yes, right there.

8 Q. So that was discovered on Monday, the 7th?

9 A. Yes.

10 Q. Did you direct officers to take control, that is,
11 to seize and otherwise process the contents of
12 that burning barrel?

13 A. Yes. DCI agents went down there and took control
14 of that and, ultimately, released it to one of
15 the evidence collection teams and it was,
16 ultimately, seized and taken in -- again, in an
17 enclosed trailer, to the Calumet County Sheriff's
18 Department for subsequent processing.

19 THE COURT: Excuse me. I'm not sure, are
20 you talking about the burn barrel was seized?

21 THE WITNESS: Yes, the whole burn barrel.

22 Q. (By Attorney Kratz)~ You spoke earlier of, Agent
23 Fassbender, about some weapons, some firearms
24 having been seized from Mr. Avery's property;
25 were there other firearms on the Avery Salvage

1 Property itself?

2 A. Yes, sir, there were.

3 Q. Were those ever taken or seized?

4 A. Yes.

5 Q. When did that happen?

6 A. I think that ended up being a multi day effort.

7 Probably started on Monday and maybe even went
8 through two or three days, because firearms were
9 located in each residence, in vehicles, in shops.
10 So, there was a multitude of firearms to take.

11 And involved with were safes, gun safes, that had
12 to be opened.

13 Q. Now, we're going to hear from Crime Lab witnesses
14 perhaps in the next week or two, but on that
15 Monday, without telling us what they told you, on
16 that Monday, the 7th of November, did you receive
17 a preliminary report from the Crime Lab regarding
18 the processing of the SUV?

19 A. I was in contact with the Crime Lab pretty much
20 every day and, yeah, I received information on
21 Monday.

22 Q. All right. We'll get from them what it is that
23 they found on each day. The question, though, is
24 when you would receive updates, daily updates,
25 from the Crime Lab, would that further direct

1 your search efforts?

2 A. Most definitely.

3 Q. Anything else happen on Monday that stands out in
4 your mind of significance, either search efforts
5 or off site investigative efforts?

6 A. Winnebago County Dive Team was there, again, to
7 conclude or finish their search of ponds. And by
8 ponds, I'm talking about adjacent property,
9 quarries, gravel pits.

10 Also, on Monday, one of the teams -- I
11 believe one of the teams, or an individual
12 officer -- no, probably one of the teams -- was
13 directed to go into Steven Avery's trailer and
14 obtain the serial number off of a computer in
15 that trailer because he wanted to get a search
16 warrant for that computer.

17 Q. All right. Let's move to the next day, then,
18 Tuesday, the 8th of November; do you remember
19 that day?

20 A. Yes, I do.

21 Q. Now, again, after receiving information from
22 interviews, as well as Crime Lab and other
23 analysis; were more directed searches to happen
24 that day?

25 A. Yes.

1 Q. Where were those?

2 A. Residences, Steven Avery's being one, Charles
3 Avery being one. I believe some vehicles, maybe
4 some of the other residences and buildings.

5 Q. Now, Agent Fassbender, I have counted, just by
6 listening to your broad overview, of several
7 times that officers have already, by this point,
8 been into Steven Avery's residence; is that
9 right?

10 A. Yes.

11 Q. On Tuesday, the 8th, did you send them in there,
12 again?

13 A. Yes.

14 Q. Tell the jury why.

15 A. On Tuesday morning, we formed another evidence
16 collection team and search team. What we were
17 looking for at that time was, again, we're
18 getting more intelligence and more information to
19 come -- that were coming in. And we sent them in
20 there to look for some of that stuff.

21 One of the primary things was, if you
22 recall, I talked about Sunday evening and the
23 Crime Lab identifying some more blood in that
24 trailer. Well, Monday, we had, again, an
25 opportunity to do that, to get back into that

1 trailer. Because we were busy with other things,
2 including a potential burial site that we found
3 off the Avery property, which took a lot of our
4 resources for a good part of the day, so one of
5 the primary purposes we went in there was to
6 analyze and collect that blood, to also serve a
7 search warrant on the computer and take that.
8 And also under our direction, to conduct a
9 complete and thorough search of that, being more
10 detailed.

11 Q. What's a thorough search? What are you talking
12 about?

13 A. What I would like, when I'm directing someone to
14 do that, that they are moving things, looking
15 under things, looking in books, in between
16 things, a complete and thorough search.

17 Q. Is that a different kind of search than you
18 understood occurred up to that point?

19 A. Yes, to a degree. The first one, they are not
20 necessarily knowing what they are looking for,
21 obvious evidentiary value, on that first one.
22 Trace evidence, like blood and stuff like that,
23 that you don't want to lose, because you can lose
24 that fairly quickly. So, I want them to take
25 that on the first one. But now, you know, we're

1 getting along in the week here, and I don't know
2 how long we're going to be holding this scene
3 after that. Let's do our complete and thorough
4 search here and make sure that we're not missing
5 anything.

6 Q. During that thorough search were you called to
7 the Avery trailer?

8 A. Yes.

9 Q. And did they, meaning the evidence techs in that
10 trailer, show you something that they believed
11 had obvious evidentiary value?

12 A. That's correct.

13 Q. What did you see?

14 A. They showed me a Toyota car key with a blue fob
15 attached to it.

16 Q. Did you direct anything be done with that Toyota
17 car key?

18 A. Yes. That would be preserved, packaged. And
19 then one of our agents, DCI agents, took ultimate
20 possession of that and transported it directly to
21 the Crime Laboratory.

22 Q. Why?

23 A. To get processed, number one, and number two, to
24 see if it worked in the RAV 4.

25 Q. What is worked in the RAV 4 mean?

1 A. If it went into the ignition and would turn the
2 key, turn the ignition of the RAV 4.

3 Q. Other than the Toyota -- Other than a Toyota RAV
4 key -- a Toyota key being found that day, that
5 is, on Tuesday, were there any other discoveries
6 that you were directed to or that you were asked
7 to come and look at?

8 A. Yes.

9 Q. What was that?

10 A. We also, that morning, we had -- not a -- on that
11 day we did have approximately 60 troopers,
12 Wisconsin State Patrol troopers come to the
13 scene. Now, the State Patrol was present from
14 day one here, doing the mapping, or helping with
15 scene security. I may have failed to mention
16 that.

17 But on that day, we had 60 troopers
18 come. The reason we had them come, is for the
19 same concept. We wanted to do more of a detailed
20 search of that entire salvage yard. And all
21 those vehicles in that salvage yard, looking now
22 for obvious evidence. And during that search
23 they were, again, coupled with some firefighters,
24 volunteer firefighters, 25, 30 maybe. And during
25 that search, two license plates were located in a

1 salvaged vehicle. Those two license plates
2 turned out to be the license plates for Teresa's
3 vehicles.

4 Q. All right. Was there a third major discovery on
5 that day, that is, Tuesday, the 8th?

6 A. Yes.

7 Q. What was that?

8 A. Directly behind the garage that's adjacent to
9 Steven Avery's residence where the dog had been
10 located, or was located, there was a burn area
11 found. And discovered in that burn area were
12 pieces of bone.

13 Q. Looking at Exhibit No. 86, can you tell the jury
14 where that burn area was located?

15 A. Yes. This is the garage for Steven Avery. And
16 then just south of that garage, this darkened
17 area, would have been a dug out area from a berm
18 or pile of dirt and gravel and that's the area
19 where the bones were discovered.

20 Q. Were some individuals with some expertise asked
21 to come take a look at that location?

22 A. Yes, the Crime Lab was on scene that day and they
23 were asked to come and help process that area.

24 Q. Any DCI agents?

25 A. Yes.

1 Q. What kind of agents, if that's a fair question?

2 A. Arson investigators or former arson
3 investigators.

4 Q. Why would you send an arson investigator to an
5 area like this?

6 A. Because it's a burn area and they were trained in
7 fires and burns and they deal with, many times,
8 finding bodies in burned buildings or wherever,
9 they are trained in that area.

10 Q. Was it your understanding that the Crime Lab,
11 with the assistance of these arson investigators,
12 began to process the scene that day?

13 A. Yes.

14 Q. By the way, Agent Fassbender, were you called to
15 look at that burn area that Tuesday?

16 A. I believe so, but I just don't recall.

17 Q. You had other things going on that day as well?

18 A. Yes.

19 Q. Other than those three major discoveries,
20 anything else occur on site that day that you can
21 recall?

22 A. I believe that evening, before the Crime Lab
23 left, we asked them to go back into Steven
24 Avery's trailer and Charles Avery's -- Charles
25 Avery's trailer and do some luminal testing

1 involving a chemical that can illuminate the
2 presence of blood, amongst other compounds or
3 chemicals, but they usually use that for
4 determining if there was any blood in that area,
5 blood that may not be visible to the naked eye.
6 So we have them do that that evening, yet.

7 Q. Now, Agent Fassbender, the next several days
8 Wednesday, Thursday, Friday, and into Saturday,
9 did you and other law enforcement agents maintain
10 control of the Avery Salvage Yard?

11 A. Yes, sir.

12 Q. And I know that we are going to hear from each of
13 the individual officers, but if you could just
14 tell us, generally, what happened for the balance
15 of the week. What kinds of additional
16 investigative efforts were made for those last
17 three days?

18 A. Crime Lab was there Tuesday and I believe
19 Wednesday. And their primary duties that they
20 were doing was just processing. I know they were
21 at the Calumet County Sheriff's Department
22 processing the barrels and stuff like that. On
23 Wednesday we obtained search warrants for
24 fingerprints and DNA from the adult members that
25 were commonly associated with the Avery salvage

1 yard, or residents, the Avery family pretty much,
2 or the members who worked on that salvage yard.
3 Did interviews of those individuals, or attempted
4 to.

5 We had, I think, one small evidence
6 collection team, or evidence technicians that
7 were doing follow-up stuff that needed to be done
8 that day. For example, we knew that there was a
9 garage door opener in Teresa's car. And then
10 they found a tool that was like an emergency
11 roadside tool. We learned that and we were
12 looking to see if we could find that anywhere, to
13 determine whether that was taken from the scene,
14 or it was actually Teresa's property. Things
15 like that. So some people went back into the
16 buildings and then did some searching that day.

17 Q. When was it that the property was turned back
18 over to the Avery family?

19 A. Saturday morning.

20 Q. The 12th?

21 A. Yes, November 12th.

22 Q. Now, although we're going to hear from Crime Lab
23 experts, I think you mentioned that each day
24 additional findings were made; is that fair?

25 A. That's correct.

1 Q. And with those additional findings, further
2 interviews and further investigation was
3 completed?

4 A. Yes.

5 Q. Now, other than this site, the balance of the
6 week, could you tell the jury, just briefly, what
7 kinds of things were happening off site?

8 A. Continued -- We would continue to do interviews
9 off site. We did records exams. Records exams
10 can consist of the business records of the Avery
11 Salvage Yard, and can go to financial records,
12 can go to telephone toll records that have been
13 subpoenaed, that type of stuff, that had to be
14 analyzed.

15 Neighborhood canvasses, again, were
16 ongoing. We tried to do traffic surveys which,
17 basically, are identifying vehicular traffic or
18 people who commonly go through that area, to see
19 if they might have seen anything, activities such
20 as that.

21 ATTORNEY KRATZ: Judge, although I'm
22 virtually finished, I do have one or two more areas
23 of inquiry. I don't know if the Court wants to take
24 our afternoon break at this time.

25 THE COURT: All right. It's just about

1 noon, so we'll take our lunch break at this time and
2 resume at 1:15. Members of the jury, I will remind
3 you, again, not to discuss this case over the lunch
4 hour. We'll see you after lunch.

5 (Jury not present.)

6 THE COURT: You may be seated. Counsel, is
7 there anything else to take up outside the presence
8 of jury before we resume after lunch?

9 ATTORNEY KRATZ: No.

10 ATTORNEY BUTING: Yes, there is, Judge. I
11 have a couple things I need to make a record on. We
12 have -- First of all, we had a request out from the
13 prosecution -- to the prosecution, for discovery,
14 for a long time, and had no response, as to any
15 citizen complaints, fire and police commission
16 complaints, anything that -- regarding Lieutenant
17 Lenk and Sergeant Colborn. And that has not been
18 complied with yet.

19 Further, we have received some
20 information from what appears to be a reliable
21 source that one or more of these burn barrels
22 were lost at some point, while in custody. That
23 is, the chain of custody apparently may have a
24 break in it, and that they were discovered, I
25 believe at the State Patrol custody rather than

1 Calumet, or DCI, or whatever. We received
2 nothing like that in our discovery. I don't know
3 if there is any such evidence. I would ask that
4 the State comply with the discovery and turn that
5 over immediately.

6 THE COURT: Mr. Kratz.

7 ATTORNEY KRATZ: Other than the defense
8 having received all of our evidence logs, we can
9 certainly make some more directed inquiries that
10 they have everything that we have, at least that I'm
11 aware of.

12 Regarding the issue of the citizen or
13 other personnel records kinds of complaints,
14 that's something I'm sure that we'll need a more
15 extended hearing on and something that we're not
16 prepared to address at this time. Of course,
17 since those witnesses aren't testifying now, it
18 doesn't become ripe yet. But I would suggest the
19 Court set aside at least some period of time
20 between now and when those witnesses testify, to
21 address those personnel records issues, which I
22 assume counsel understands what's necessary to
23 secure those -- those items.

24 But regarding the chain of custody, not
25 only can that be addressed by cross-examination,

1 but I believe we have complied, as has been noted
2 throughout this case, with discovery, that the
3 defense has things perhaps that they don't even
4 know they have. But that notwithstanding,
5 Judge, we'll make sure, once again, that
6 everything has been turned over. And if there's
7 a further problem, we can alert or address the
8 Court at that time.

9 THE COURT: All right. I will ask the
10 attorneys to discuss this matter further. If there
11 is still an area of disagreement that requires a
12 hearing, let the Court know and I will schedule it.

13 ATTORNEY KRATZ: All right. Thank you.

14 (Noon recess taken.)

15 (Jury present.)

16 THE COURT: Mr. Kratz, at this time you may
17 resume your direct examination of the witness.

18 ATTORNEY KRATZ: Thank you, your Honor.

19 **DIRECT EXAMINATION CONTD.**

20 BY ATTORNEY KRATZ:

21 Q. Agent Fassbender, we left off talking about the
22 last three or four days of the search, bringing
23 us to the 12th of November. On the 12th of
24 November, how was this scene returned to the
25 Avery family?

1 A. I met with Charles Avery and, I believe, Barb
2 Janda was also present, and it was turned over to
3 Charles.

4 Q. Between the 5th and the 12th of November, had you
5 received requests from Avery family members to
6 retrieve some personal belongings within the
7 salvage yard and the residences?

8 A. Yes, we had quite a few requests and, actually,
9 contacts with the Avery family members. They had
10 pets or animals on the scene; medicine, I
11 believe; mail on one occasion, where we had Barb
12 Janda come in and get some mail. We were
13 dealing, both Investigator Wiegert and myself,
14 with them consistently.

15 Q. Were attempts made, when at all practical, to
16 meet those needs, whether for business or
17 personal reasons?

18 A. Yes, I understand that we had this -- their
19 homes, their businesses, for a week. And I
20 understand that it is an extreme hardship. I
21 have empathy for that. When we go to these
22 scenes, we try to process them as quickly as
23 possible because of that.

24 Q. The last area of inquiry, Agent Fassbender, you
25 mentioned limiting access to the scene itself

1 from the outside, that is, from citizens or at
2 least knowing who was on that property; did you
3 testify about that?

4 A. Did I, yes.

5 Q. Was there a method created to insure that you
6 could keep track of that kind of information?

7 A. Yes, logs are created on crime scenes such as
8 this, to record officers, law enforcement
9 personnel, or whoever else, whether it be a
10 coroner, whoever, that comes into the scene. In
11 fact, when I got there on Saturday, ultimately, I
12 got down by the car crusher, that staging area
13 down there, and about 2:25 I think it was. And
14 the officers that were staged there, I told them,
15 I recommended that they start a log there also.

16 Q. Was that done to your knowledge?

17 A. I believe so.

18 Q. And do you know about what time a log was started
19 for entry on to the Avery property?

20 A. I'm not sure.

21 Q. Again, about what time was it that you arrived?

22 A. About 2:00.

23 Q. And was a log begun yet at that time?

24 A. I believe so, but I just don't recall.

25 Q. That would have been somebody else's area of

1 involvement or decision; is that right?

2 A. Yes, sir.

3 ATTORNEY KRATZ: Judge, I would move the
4 admission of Exhibits 130 through 138 at this time.

5 THE COURT: Any objection?

6 ATTORNEY BUTING: None.

7 THE COURT: Very well, those exhibits are
8 admitted.

9 ATTORNEY KRATZ: That's all I have of this
10 witness. Thank you.

11 THE COURT: Mr. Buting.

12 ATTORNEY BUTING: Yes, Judge.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY BUTING:

15 Q. Good afternoon, Mr. Fassbender.

16 A. Good afternoon.

17 Q. Let me go back to the beginning of your
18 testimony, about some of your experience, for a
19 few minutes, okay?

20 A. Yes.

21 Q. Twenty-seven years as a law enforcement officer
22 is a long time; would you agree?

23 A. Yes.

24 Q. Not that you are old yet, but it's a lot of
25 experience. And I'm not sure that we got clear,

1 was all of that with DCI?

2 A. Five years of that was with the State patrol.

3 Q. Okay. But always for the State, pretty much?

4 A. Correct.

5 Q. And you did say that one of the functions of DCI
6 is to help out other law enforcement departments,
7 all over the state, particularly smaller ones,
8 that may not have as many detectives, right?

9 A. Certainly.

10 Q. And, you know, coming from outside of an area,
11 you kind of have a different perspective perhaps
12 than the local people who have been, you know, in
13 individual local departments?

14 A. Yes, possibly.

15 Q. I mean, you are somewhat at a disadvantage when
16 you talked about knowing local vendors and
17 resources if you need tow trucks and that sort of
18 thing, right?

19 A. Yes.

20 Q. So it's helpful to have those local departments
21 available for that kind of assistance, certainly?

22 A. Yes, sir.

23 Q. Okay. But in smaller departments sometimes, you
24 know, you realize that there's probably some
25 history between certain suspects and certain

1 police departments?

2 A. Certainly that could be.

3 Q. Okay. You have the advantage of, though, coming
4 on the scene without that kind of problem. You
5 don't have any prior history with anybody who may
6 be a suspect or person of interest, right?

7 A. Yes, I like to think so.

8 Q. And in this case, when you were called in, you
9 live in the Fox Cities area?

10 A. Correct.

11 Q. Okay. So you watch the television stations from
12 Green Bay, and that's where you get most of your
13 media news?

14 A. Yes, sir.

15 Q. And Appleton news, of course. So you knew this
16 Teresa Halbach case, missing person case, had
17 already gotten quite a bit of publicity, right?

18 A. I had seen bits and pieces, yes.

19 Q. Okay. And when you were called into this case,
20 you knew that this was going to be pretty high
21 profile; would that be fair?

22 A. Just based on Teresa missing, or where I was
23 being sent?

24 Q. Where you were being sent?

25 A. The possibility, yes, existed.

1 Q. Okay. So you wanted -- You knew that your
2 performance as an officer -- You didn't at that
3 point know you would be a lead investigator, did
4 you?

5 A. No.

6 Q. But you knew that, obviously, your performance
7 could be under the microscope, so to speak, of a
8 high profile case?

9 A. My performance is always under a microscope, but
10 more people may see it, yes.

11 Q. Okay. Sure. So you wanted to make sure that it
12 was a thorough investigation that you undertook,
13 right?

14 A. Yes.

15 Q. As complete an investigation as you could?

16 A. Yes.

17 Q. And as you described it, this funnel approach,
18 you wanted to be as thorough and get all leads
19 and everything carefully investigated before you
20 narrowed down to the bottom of that funnel, that
21 one man, right?

22 A. Generally, yes.

23 Q. Okay. Now, you also knew -- well, maybe you
24 didn't. Did you know, before you got assigned to
25 the case and you went over to the Avery property,

1 were you aware of Mr. Avery, who he was?

2 A. Yes.

3 Q. You knew about the wrongful conviction, and all
4 the years in prison, and all of that, right?

5 A. Yes.

6 Q. And you knew that he had filed a lawsuit against
7 Manitowoc County after that, right?

8 A. I believe so.

9 Q. Well, was there talk in the law enforcement
10 community, in this whole area, you know,
11 northeastern Wisconsin, about this lawsuit, at
12 all?

13 A. No, not from my experience.

14 Q. Okay. So what you knew was not insider
15 knowledge, it was just from the news?

16 A. Essentially, I know DCI looked at something
17 related to that.

18 Q. In fact, the Attorney General commissioned a
19 report by your department?

20 A. Yeah, the Attorney General.

21 Q. Okay. And she looked and focused on the wrongful
22 conviction of Mr. Avery to try and see what, if
23 anything, went wrong, that could be determined?

24 A. Although I wasn't involved in that, I believe so.

25 Q. Okay. And you knew, then, that after all that

1 was done, and all the information was gathered,
2 and additional facts were learned, Mr. Avery
3 filed a lawsuit against Manitowoc County?

4 A. Yes, I believe so.

5 Q. And against Manitowoc County sheriff or former
6 sheriff?

7 A. I'm not sure about that. I know it was Manitowoc
8 County. I believe Manitowoc sheriff too, yes.

9 Q. Okay. All right. And then you arrive, with that
10 background and that knowledge, and you come to
11 the scene, and the first thing you do is you go
12 to the Command Post, which is right at the
13 entrance way to the Avery property, right?

14 A. Yes, sir.

15 Q. And you go through a debriefing -- or a briefing,
16 I should say, with those in command, right?

17 A. Yes.

18 Q. You mentioned Sheriff Pagel, Deputy Inspector
19 Schetter perhaps, was he one of the ones you
20 spoke with?

21 A. Perhaps, I can't recall.

22 Q. Was Investigator Wiegert there?

23 A. I don't think he was. I think he was obtaining a
24 search warrant.

25 Q. Okay. Lieutenant Hermann, maybe?

1 A. I don't know.

2 Q. All right. But some upper brass, so to speak, in
3 the Manitowoc -- I'm sorry, in the Manitowoc
4 County Sheriff's Department, as well as the head
5 of the Calumet.

6 A. I definitely remember speaking with Sheriff
7 Pagel. And I know I saw Deputy Inspector
8 Schetter there.

9 Q. Okay. And Schetter is with Manitowoc Sheriff's
10 Department and Pagel is with Calumet?

11 A. Correct.

12 Q. And so you knew, then, that a determination had
13 already been made, before you arrived, that there
14 was a conflict of interest, or an appearance of a
15 conflict of interest, for Manitowoc County to
16 investigate Mr. Avery?

17 A. Correct.

18 Q. So for that reason, Calumet had been turned --
19 the lead investigation authority had been turned
20 over to Calumet?

21 A. Yes.

22 Q. And you, of course, wanted to do everything you
23 could, within your knowledge, to try and make
24 this investigation a fair one, right?

25 A. Yes, sir.

1 Q. You didn't want to go into this and set up some
2 kind of investigation that would have an
3 appearance of unfairness, right?

4 A. I didn't want to set up an investigation that was
5 unfair.

6 Q. Okay. Much less the appearance. And this was a
7 high profile case, you didn't want the public to
8 think that you were leading an investigation that
9 appeared to be unfair or biased in some way,
10 against the gentleman who had sued Manitowoc
11 County?

12 A. I don't know if I agree with that. I was
13 concerned about finding the truth, not about the
14 press, not about what people thought. And I made
15 my decisions based on that.

16 Q. All right. At any rate, in order to try and
17 ensure that there was a fair investigation, you
18 kind of looked around and made some decisions
19 that a few things had to be -- had to be changed,
20 that hadn't been done yet, right?

21 A. I'm not sure what you are asking.

22 Q. All right. I will be more specific, I'm sorry.
23 When you arrived at the property at 2:25 p.m.,
24 you drove right in to the Command Post and didn't
25 have to sign in or sign out, initially, did you?

1 A. As I answered before, I don't recall.

2 Q. All right. But let me just mark something and
3 show it to you.

4 (Exhibit No. 142 marked for identification.)

5 Q. All right. Showing you what's marked now as
6 Exhibit 142, does that look at all familiar to
7 you?

8 A. Yes, I have seen this.

9 Q. Okay. And can you tell the jury what that is.

10 A. That's one of the logs I was talking about, a
11 sign-in log, sign-out log --

12 Q. Okay.

13 A. -- at the scene.

14 Q. Okay. And this particular one, I think actually
15 says -- no this one doesn't, doesn't say exactly
16 where it is. But does this one appear to be one
17 that was taken up at the intersection of Highway
18 147 and Avery Road, or does this look like one
19 from somewhere else?

20 A. This looks like one that was started down by the
21 car crusher, I believe, that staging area down
22 there.

23 Q. Okay. So everybody who came down in that area
24 had to sign in there?

25 A. I would hope so.

1 Q. Okay. The very first entry is what?

2 A. DCI Agents Hunsader and Fassbender at 2:25 p.m.

3 in and then some initials.

4 Q. Okay. So this log, in any event, appears to have

5 been started right with your arrival?

6 A. Yes.

7 Q. And that's good police practice to do that,

8 right?

9 A. Certainly.

10 Q. You then have a record of everybody who comes and

11 goes, right?

12 A. Yes.

13 Q. And it has got an exact date and time that

14 someone comes, right?

15 A. Correct.

16 Q. And that applies to officers?

17 A. Yes.

18 Q. No matter what their rank?

19 A. Yes.

20 Q. Even the top dog sheriff has to sign a log like

21 this, right?

22 A. They should.

23 Q. In order to get past that checkpoint, you would

24 have to sign in, if you were going in in the

25 normal way, right?

1 A. You should, yes, if you are going by that
2 checkpoint, yes.

3 Q. Well, unless you were eluding the checkpoint in
4 some way, and coming in at a different location,
5 you would really have to sign in, wouldn't you?

6 A. Yes.

7 Q. The guard or the officer who's there says -- you
8 know, doesn't let anybody by without signing in?

9 A. Correct.

10 Q. And, now, you said you have seen this document
11 before. Have you had a chance, in the past, to
12 go through it with much detail?

13 A. No, probably not.

14 Q. I'm going to show it to you for a minute, if you
15 could look at it, please, and --

16 THE COURT: Is this still Exhibit 142,
17 Mr. Buting?

18 ATTORNEY BUTING: Yes it is.

19 Q. All right. Would you make note of the last page,
20 which is toward the end of the day when people
21 are signing off. You said around 10:00 people
22 were knocking off on -- this is the first Friday,
23 November 5th -- I'm sorry, Saturday,
24 November 5th?

25 A. Yes.

1 Q. Most of the investigation detectives were leaving
2 around 10-ish, something like that?

3 A. Ten, eleven, sure.

4 Q. Okay. And towards the bottom there, it says --
5 would you read that line, please.

6 A. In military time, 2241 hours, Lieutenant Lenk,
7 Detective Remiker, Sergeant Colborn, out. And,
8 then, must be a call number of the officer that
9 was in control of the log, 492.

10 Q. Okay. And 2241, what is that in regular
11 civilian?

12 A. 10:41.

13 Q. Okay.

14 A. P.M.

15 Q. All right. So the log shows that Lieutenant Lenk
16 signed out, from that checkpoint, at 10:41 p.m.
17 on November 5th, correct?

18 A. Yes. If this is all November 5th, yes.

19 Q. Okay. Well, if you take a minute and look
20 through there and show me where Lieutenant Lenk
21 signed in, if at all.

22 ATTORNEY KRATZ: Judge, I'm going to
23 object. That assumes a fact that's not into
24 evidence, that Lieutenant Lenk was there before
25 2:25.

1 ATTORNEY BUTING: Well, we're establishing
2 this.

3 ATTORNEY KRATZ: Well, if you're
4 establishing that at all, that would be hearsay. If
5 that's what he's using it for, he's assuming a fact
6 that's not in evidence.

7 THE COURT: I understand the question to
8 relate simply to whether or not there is a sign in
9 for Mr. Lenk at some earlier point in time.

10 ATTORNEY KRATZ: With respect to the Court
11 and counsel, then, he should ask that question,
12 Judge, not show me where Lieutenant Lenk signed in,
13 if he's on that form.

14 THE COURT: I will allow you to go into
15 that on redirect.

16 ATTORNEY KRATZ: Thank you, Judge.

17 A. And the question was?

18 Q. The question is, do you see an entry that
19 Lieutenant Lenk signed in anywhere on that log on
20 November 5th?

21 A. No, sir, I did not.

22 Q. All right. Now, correct me if I'm wrong, feel
23 free, but there's a couple of possibilities of
24 why that might be. One is that Detective Lenk
25 bypassed the checkpoint somehow, right?

1 A. Yes, that checkpoint.

2 Q. And we have -- You have testified already that
3 that is the checkpoint to get in that area and no
4 one is supposed to come and go without getting
5 checked in, right?

6 A. In that particular area down by the car crusher,
7 yes.

8 Q. Okay. And the car crusher is the closest
9 checkpoint -- one of the closest check areas to
10 the RAV 4, right?

11 A. Correct.

12 Q. Another possibility is that he was -- Lieutenant
13 Lenk arrived and was at the scene before that log
14 was even begun, right?

15 A. Right.

16 Q. Do you know Detective Lenk before this
17 investigation?

18 A. No.

19 Q. So, did you know him by sight at all before this
20 investigation? Would you be able to recognize
21 him if he showed up at Avery salvage?

22 A. No, I don't believe so.

23 Q. Okay. Do you know whether you saw this person,
24 now known as Lieutenant Lenk, at the Avery
25 Salvage when you arrived at about 2:00?

1 A. I don't recall.

2 Q. Okay. So you have no recollection of seeing him
3 arrive yourself?

4 A. No recollection.

5 Q. Or recollection of him even being there when you
6 arrived?

7 A. Correct.

8 Q. Okay. By the way, if I may divert for just a
9 second, you said -- When you talked about putting
10 together some teams, you said that you had
11 actually trained certain individuals in one of
12 these evidence processing teams from Manitowoc?

13 A. A couple of them.

14 Q. Would you just tell me who, the names of those
15 people?

16 A. Detective Remiker and Sergeant Colborn.

17 Q. Okay.

18 A. Not in evidence collection.

19 Q. Not in evidence collection?

20 A. No.

21 Q. So whatever personal knowledge you had about
22 their training had nothing to do with their skill
23 in that specific field of collecting evidence?

24 A. Correct.

25 Q. Okay. When you came into this case, I assume you

1 were not considering the possibility that some
2 law enforcement officer would actually plant
3 evidence against Mr. Avery, were you?

4 A. No.

5 Q. Have you ever encountered a case where you had to
6 deal with that issue?

7 A. I worked in public corruption for 12 years with
8 white collar crime, and planting evidence, I
9 don't believe I have ever had a police officer do
10 that.

11 Q. All right. So when you came to the scene, your
12 focus was not on making sure that no police
13 officer would do something that bad, like plant
14 evidence, right? That wasn't part of your focus
15 when you arrived?

16 A. Certainly.

17 Q. Okay.

18 ATTORNEY BUTING: I'm sorry, counsel, could
19 we put up Exhibit 86 again, our most common exhibit
20 so far.

21 Q. All right. Could you show us, again, where this
22 checkpoint area was or -- Strike that. Show me
23 where, when you drove down to the RAV 4 area, or
24 the southeast corner of that property, show me
25 where you parked? Or did you drive, or walk, I'm

1 sorry?

2 A. I believe, the first time I went down there I
3 drove.

4 Q. Okay. And show me about where you parked. Could
5 you maybe zoom it up one level? Okay. That's
6 good.

7 A. I believe it was probably right in this area,
8 right here.

9 Q. Kind of right next to the crusher? Like here's
10 the crusher, right?

11 A. You know, I can't remember exactly, but I would
12 say a little south of the crusher. Probably be
13 just -- not halfway in between that pond area and
14 the crusher, but further south of the crusher a
15 bit.

16 Q. Well, did you do a report that sort of summarized
17 your involvement during that week?

18 A. Yes.

19 Q. I'm not going to mark this right now, unless we
20 later need it. But for the record, is this one
21 of your reports?

22 A. Yes, it is. It's a DCI report, report No. 180,
23 Case File 051776.

24 Q. Okay. And this is a report that you prepared
25 when, back in November of 2005?

1 A. Report date 12/9/05.

2 Q. Okay. But closer in time to the events than we
3 are today, obviously?

4 A. Certainly.

5 Q. I want you to take a moment and read this to
6 yourself, this paragraph to yourself, and see if
7 that refreshes your recollection about where you
8 parked.

9 A. Okay.

10 Q. Okay. I will leave it here in case we need it
11 again, but does that help refresh your
12 recollection a little bit?

13 A. It does. It's similar to what I said.

14 Q. Where it says just west of the crusher, right?

15 A. Near and just west of the crusher.

16 Q. So, in this area, but now you're thinking maybe a
17 little bit further down here?

18 A. Maybe not. I thought I was a little further
19 south to the crusher when I look at the pictures.
20 Whether it was just west of the crusher, I'm not
21 sure. It may have been.

22 Q. In any event, from the crusher, from where you
23 parked, would be at least somewhat closer to the
24 location of the RAV 4 than it would be if you
25 were all the way at the crusher itself, by

1 however many feet you parked away?

2 A. Yes.

3 Q. Okay. And from that distance you indicated you
4 were still quite a distance away, right?

5 A. Yes.

6 Q. And so much so that you pulled out some
7 binoculars to be able to view the RAV 4 from that
8 distance?

9 A. I didn't pull out some binoculars, I think
10 someone at the scene had some and they let me use
11 them.

12 Q. Okay. Well, at this time you think it was 2:25,
13 so your understanding was that the first officers
14 arrived at 11?

15 A. I believe so.

16 Q. And this was, as you described it, at that point,
17 I think you said this on direct, this RAV 4 was,
18 at that point, the major piece of evidence on
19 this property, that you knew of?

20 A. Yes.

21 Q. That was it. That's the focus. That's the
22 big -- That's the missing woman's car --

23 A. Yes.

24 Q. --right?

25 A. Yes.

1 Q. And when you arrived up there, having already
2 been briefed at the Command Post, you knew about
3 this issue with the appearance of a conflict for
4 Manitowoc County, right?

5 A. Correct.

6 Q. And then, yet, you discovered that it wasn't
7 until 3:00, approximately, that a Calumet deputy
8 took over responsibility for trying to secure
9 that major piece of evidence?

10 A. I don't know that for sure as I sit here, but it
11 may have been.

12 Q. Well, maybe just so the record is clear, you have
13 one advantage of being a witness here today in
14 that you haven't been sequestered, right?

15 A. Correct.

16 Q. You have been able to sit here at the trial along
17 with Mr. -- or Investigator Wiegert, and hear
18 most of the testimony, right?

19 A. Correct.

20 Q. And you heard, I think it was with Sergeant Orth,
21 testimony that there was at 3:04 p.m. -- or maybe
22 it was Lieutenant Hermann, I may be mistaken,
23 that it was 3:04 p.m. that Manitowoc Deputy
24 Sheriff Cummings transferred responsibility for
25 security of that vehicle to a Calumet County

1 deputy?

2 A. I'm not disputing it, I just don't independently
3 recall that bit of testimony.

4 Q. You don't recall the time, or don't recall the
5 testimony?

6 A. When he said what time he turned it over.

7 Q. So, you wouldn't disagree with me that it was
8 3:00?

9 A. I have no reason to.

10 Q. Okay. So did it cause you concern that for four
11 hours the major piece of evidence in this case
12 was under the control of the very department that
13 had already been determined to have a conflict of
14 interest in this case?

15 ATTORNEY KRATZ: Objection, Judge. I think
16 it's a mischaracterization. The word conflict is,
17 in fact, a mischaracterization.

18 ATTORNEY BUTING: I will rephrase it. I
19 know what counsel is talking about.

20 Q. Did it cause you concern that, for four hours,
21 the major piece of evidence in this case was
22 under the control and security of the one
23 department that, itself, determined to have an
24 appearance of a conflict of interest?

25 A. No, it didn't. I was not involved in that

1 decision making. I knew that officers were on
2 that scene, protecting that scene.

3 Q. You weren't involved in that decision making at
4 all, because that took place before you got
5 there?

6 A. Correct.

7 Q. Okay. And the fact, you were trying to shape
8 things up a bit and make sure that logs were
9 taken and all of that when you arrived?

10 A. I suggested a log be kept.

11 Q. Okay. So it didn't concern you that there was
12 going to be an appearance that the fox was
13 guarding the hen house, so to speak; is that
14 right?

15 A. Absolutely not.

16 Q. Okay. Well, did you suggest that Manitowoc back
17 off and that the Calumet deputy take over? Was
18 that part of your decision?

19 A. I don't believe so. It happened, but I don't
20 believe that was specifically my decision.

21 Q. So it was just coincidental that it happened
22 around the time you arrived?

23 A. Probably, yes.

24 Q. All right. Now, at that point, you were already
25 designated as co-leader?

1 A. No, I don't think so. I think that happened when
2 Detective Wiegert got back and we -- I can't
3 remember when exactly, if it was after Brutus
4 alerted, or before, but we were having a briefing
5 at the command center and a determination was
6 made and we were asked to do that.

7 Q. Okay. So, that's -- All right. That's fine. So
8 that was after Investigator Wiegert came back
9 with the search warrant?

10 A. Yes.

11 Q. And that was about 3:35, I believe, right?

12 A. I believe so, 3:25, 3:35 and it was even later
13 than that, I believe.

14 Q. The designation was later than that?

15 A. Yes.

16 Q. Sure. I understand. So, then, just so we're
17 clear, when you got there, the leader of the
18 investigation, Investigator Wiegert, was not
19 present on the property?

20 A. He was not present. I don't even know if he was
21 the leader or not, but he was not present.

22 Q. And there were no prosecutors present?

23 A. When I got there, I can't remember. I know they
24 were there at some time, I just can't remember if
25 they were there then.

1 Q. Well, if you look at Exhibit 142, see if that
2 refreshes your recollection as to when any of the
3 district attorneys involved returned to the
4 property.

5 A. I see an indication at what appears to be
6 3:32 p.m.

7 Q. 3:32?

8 A. 3:32 p.m. Manitowoc County District Attorney and
9 Assistant District Attorney on the scene. That
10 is not saying whether they were there earlier
11 than 2:25 or not.

12 Q. Okay. What about Mr. Kratz or his assistant?

13 A. 4:03 p.m., Assistant District Attorney from
14 Calumet County, Jeff Froehlich. And then there's
15 an entry at 4:17 for both district attorneys
16 returned.

17 Q. All right. That's good enough for now, I guess.
18 So during that period of time, then, until
19 Investigator Wiegert came -- or came back with a
20 search warrant, or until the district attorneys
21 came, did you view yourself as sort of an agent
22 in control, or not; you were still an outsider,
23 so to speak?

24 A. Yes, I did not view myself as an agent in control
25 of anything.

1 Q. Okay. That's fine. At some point, though, that
2 did happen. And Sheriff Pagel, I believe it was,
3 requested you to be a co-leader?

4 A. Probably, yes.

5 Q. And then, you mentioned that you had some
6 meetings and discussions about trying to develop
7 some kind of a search plan?

8 A. Yes.

9 Q. And the first thing you did was this, you called
10 it a sweep of all the properties, right?

11 A. Correct.

12 Q. And like you said, this was a missing person case
13 still, but you came into this thinking something
14 more, didn't you.

15 A. Yes, based on what I knew at the time, plus, to
16 me just good practice to do that.

17 Q. Okay. Something more, even including a homicide,
18 right?

19 A. True.

20 Q. And, in fact, the search warrant applications
21 that were prepared told the Court they were
22 looking for evidence, including evidence of a
23 possible homicide, right?

24 A. Correct.

25 Q. And that was -- that took place even before you

1 got to the scene?

2 A. Yes.

3 Q. Okay. And so, in part, because of that, I
4 believe you testified on direct that you wanted
5 to make sure that you didn't miss anything in
6 this investigation, that it could be a lot more
7 than just a missing person, it could be homicide.
8 So you wanted to make sure that nobody missed
9 anything, right?

10 A. You try to do that, as a concept, to go in with
11 that mentality.

12 Q. All right. Let me go through some of these
13 searches, briefly, with you. If I told you that
14 on November 5th, at 3:48 p.m., the first entry
15 was made to Mr. Avery's trailer for this sweep
16 type search; does that fit with your
17 recollection?

18 A. That sounds right.

19 Q. Detective Remiker and Deputy Steier?

20 A. Yes.

21 Q. Two of them went in, it was a quick 10 minutes in
22 and out of the building, looking to see if there
23 was a live person there, Teresa, right?

24 A. Yes.

25 Q. And then they went on to other buildings and, you

1 know, doors were being kicked in, if necessary to
2 get in, because you were looking for, hopefully,
3 still a live person?

4 A. Yes, there were multiple teams, not just that one
5 team, I think.

6 Q. Okay. And then immediately after they left
7 Mr. Avery's residence, the trailer, the same team
8 immediately went right into the detached garage
9 sitting next to his trailer as well?

10 A. I think so, yes.

11 Q. Again, a quick entry, look around to see if
12 there's anybody there, alive or otherwise?

13 A. Yes.

14 Q. But in neither instance was anything seized?

15 A. Not that I know of.

16 Q. Okay. And, then, you did mention that, I think,
17 the next level of searches sort of right after
18 the sweep, and the sweep was also to make sure
19 that there's nobody there that could harm the
20 officers, some gunmen, armed gunmen, or something
21 like that, right?

22 A. For our protection, yes.

23 Q. That's routine procedure?

24 A. Correct.

25 Q. Okay. But the next level of search after that

1 was these dogs. You said there were like nine
2 cadaver or human remains type dogs?

3 A. A combination of human remains, mixed, and live.

4 Q. So all different kinds of dogs, but search dogs?

5 A. Yes.

6 Q. And they started going through everything, right,
7 as quickly as they could?

8 A. Primarily the vehicles in the salvage yard.

9 Q. Okay. And we -- we heard about this indication
10 or alert that this dog, Brutus, did in the
11 bathroom of Mr. Avery's trailer, right?

12 A. Yes.

13 Q. You heard that testimony today?

14 A. Yes.

15 Q. But you were aware that there were other alerts,
16 many alerts, all over that property, right?

17 A. There were other alerts, yes.

18 Q. Including right at the front door of Chuck
19 Avery's trailer, residence, right?

20 A. Correct.

21 Q. Now, Chuck Avery, Mr. Avery's brother, also lived
22 on the property, right?

23 A. Yes.

24 Q. And in fact, his trailer is the closest trailer
25 to the RAV 4 that was discovered, closest

1 residence, right?

2 ATTORNEY BUTING: Maybe if you could zoom
3 out one --

4 A. Yes.

5 ATTORNEY BUTING: -- degree, please,
6 counsel?

7 Q. Could you point where Chuck Avery's residence was
8 on there, or is?

9 A. I will have to squint a little bit here, but I
10 think it's right there.

11 Q. Okay. And there were other hits, other buildings
12 and cars, and kind of all over the place,
13 initially, right?

14 A. Yes.

15 Q. So it's not like Steven Avery's bathroom, where
16 he shaves, is the only place that any dog alerted
17 on that 40 acre property?

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

19 Q. All right. Okay. Then you broke up into teams.
20 Well, actually, let me go back for just a minute
21 before I -- A number of times, let me just
22 clarify that. A number of times you said this
23 was a general search plan you were trying to put
24 together at that stage, right?

25 A. Beginning with the sweeps?

1 Q. Yeah, the whole plan from when you got there.

2 A. Trying to put a plan together, certainly, yes.

3 Q. And that it was fluid, that it adjusted based on

4 information, new information, you might get or

5 not get, right?

6 A. Throughout the entire time we had that property,

7 yes.

8 Q. Okay. Well, I think you said on direct, though,

9 that you weren't -- when you set up that very

10 first plan, that you really weren't sure what you

11 were searching for.

12 A. We had a search warrant that indicated items that

13 we were searching for.

14 Q. Right. And in that search warrant -- I mean, you

15 took us off a little with an example of a case

16 where some pathologist told you, maybe look for a

17 knife with a serrated blade or something, right?

18 A. Correct.

19 Q. In this case, though, you didn't have that kind

20 of information yet.

21 A. That's right.

22 Q. You said you were looking at this investigation

23 already as a homicide, potentially?

24 A. Yes.

25 Q. And your search warrant told you to look for any

1 kind of instrumentologies (sic) that could cause
2 a homicide, including knives, right?

3 A. Yes.

4 Q. Firearms, right?

5 A. Yes.

6 Q. Whatever else could be used, items to bludgeon
7 someone, anything like that, right?

8 A. Correct.

9 Q. So the officers did know to look for all those
10 kinds of items, at least?

11 A. They should have, yes.

12 Q. All right. So -- So, then, after the first
13 entries, after the very first brief sweep of
14 Mr. Avery's trailer, you then sat down to put
15 together a team who could actually start
16 collecting evidence -- search and collect
17 evidence, not just do these sweeps?

18 A. Yes.

19 Q. And, again, I'm assuming that foremost in your
20 mind was that you wanted to make sure that this
21 was going to be a fair investigation and a fair
22 search of anyone's property on that 40 acre
23 parcel, right?

24 A. Of course.

25 Q. And so you would not knowingly have assigned

1 officers to certain duties, if you had known that
2 they might be in a situation where there's an
3 appearance of a conflict of interest, right?

4 A. Again, I have trouble with the word appearance.
5 If there's a definite conflict of interest, that
6 would be a concern of mine.

7 Q. All right. Well, let me ask it this way, sir.
8 Did you know, on that day, November 5th, when you
9 are putting this team of searchers together, did
10 you know that Lieutenant Lenk had been deposed as
11 a witness in Mr. Avery's civil lawsuit, just
12 three weeks earlier?

13 A. No, I didn't.

14 Q. Did you know that Sergeant Colborn, Sergeant
15 Andrew Colborn, had also been deposed as a
16 witness just three weeks earlier?

17 A. No, I didn't.

18 Q. And neither Sergeant Colborn nor Lieutenant Lenk
19 told you those -- that fact, did they?

20 A. Not to my recollection, no.

21 Q. As a matter of fact, when did you first learn
22 that they had been deposed; was it at my behest?

23 A. It may have been. I don't know if I knew before
24 then, at a hearing.

25 Q. A hearing in August?

1 A. That may have been.

2 Q. That was your first -- the first time anybody
3 told you, hey, these guys were deposed as
4 witnesses, with Mr. Avery sitting right there?

5 A. I don't remember if that was the first time.

6 Q. All right. But, surely, you didn't know it
7 anyway on November 5th?

8 A. Correct.

9 Q. And if you had known that, if you had known that
10 these two officers who you were assigning to go
11 into Mr. Avery's residence, a person of interest,
12 if you had known that those two officers had been
13 deposed as witnesses in that civil case, you
14 would not have assigned them to that duty would
15 you?

16 A. That's not correct. Based on what I know now --

17 Q. I'm asking you your knowledge then. Are you
18 telling me that you would have, even if they had
19 -- if they had told you, and if you had known,
20 that they were witnesses in that civil case, you
21 would have still assigned Lenk and Colborn, to
22 the evidence team that went into Mr. Avery's
23 residence?

24 A. Number one, I needed evidence technicians.

25 Number two, I would have asked --

1 ATTORNEY BUTING: Your Honor --

2 A. -- them what it related to.

3 ATTORNEY BUTING: -- this is a yes or no
4 answer. He can explain it on redirect.

5 THE COURT: That's correct, it is a yes or
6 no answer.

7 A. Based on -- I guess repeat the question again.
8 I'm saying yes.

9 Q. You are saying that even if you had known that
10 Lenk and Colborn had been witnesses in the civil
11 lawsuit, three weeks earlier deposed in
12 Mr. Avery's civil lawsuit, you would have still
13 assigned them to go search Mr. Avery's residence?

14 A. There's more to the answer. You want yes, I will
15 tell you yes right now, but there's more to that
16 answer.

17 Q. All right. Well, let me talk about what your
18 resources were. You, by that time, had other
19 people who could go in that -- Mr. Avery's
20 residence and search, didn't you?

21 A. We were looking for trained evidence technicians
22 and we put a team together with them. I don't
23 know of any other people that I would have used
24 for that.

25 Q. Well, you had another team, didn't you? You had

1 another team search other areas, other buildings
2 on that property?

3 A. On Saturday, no. The Crime Lab was there, but
4 they were busy with the vehicle.

5 Q. All right. You had the property for a week?

6 A. Yes.

7 Q. You went in and out of this trailer -- we'll get
8 into how many times during that week -- there
9 would have been no reason for you to rush to
10 search Mr. Avery's trailer, without waiting a few
11 more moments for the Crime Lab specialists to
12 come and search it?

13 A. On Saturday, or another day?

14 Q. Saturday, or even wait until another day. I mean
15 you already knew that Teresa wasn't inside.

16 A. I had a capable and qualified team that could go
17 in there and do the job.

18 Q. All right.

19 A. I sent them in there.

20 Q. And there were certainly other buildings on that
21 property, where other people resided, that did
22 not have a civil lawsuit that required the
23 testimony, at a deposition, of Mr. Lenk and
24 Mr. Colborn, right?

25 A. Yes.

1 Q. Chuck Avery, let's just look at him for a second.
2 It's another residence where the dog alerted,
3 right?

4 A. Yes.

5 Q. Could have sent Lenk and Colborn in there and
6 have someone else go into Mr. Avery's residence
7 to, again, make sure that there's no appearance
8 of some funny business going on?

9 A. Saturday?

10 Q. Yes.

11 A. A possibility. I'm looking at other bits of
12 information also when I'm determining where we're
13 sending in our first team.

14 Q. Well, you sent the first team to Mr. Avery's,
15 because you said that was the obvious place to
16 start.

17 A. Based on several reasons.

18 Q. All right. Let's look at those a little bit. I
19 think right before that, if I recall, you said
20 that Mr. Avery was not the only person being
21 investigated?

22 A. Correct.

23 Q. But that you felt he was the most obvious place
24 to start.

25 A. I had to pick a place to start. The person who

1 last saw that person alive was a pretty logical
2 place to start.

3 Q. But you have done many homicide investigations
4 over the years, right?

5 A. That depends on what you term as many. I'm not
6 going to say I have done hundreds of homicide
7 investigations.

8 Q. But you have done enough, you know about certain
9 patterns, for instance, often the most obvious
10 suspect in a homicide is a spouse, you look at
11 the spouse, right?

12 A. Yes, the people we love the most.

13 Q. Or you look at a boyfriend or an ex-boyfriend,
14 don't you?

15 A. Yes.

16 Q. Or how about a roommate?

17 A. Yes.

18 Q. How about a roommate who doesn't report the
19 victim missing for three, almost four days?

20 A. Yes.

21 Q. That would be somebody you would want to
22 investigate?

23 A. That's a possible area to look at.

24 Q. That would be somebody you want to ask for an
25 alibi?

1 ATTORNEY KRATZ: Judge, I'm going to
2 interpose an objection. If counsel really wants to
3 get into a true motive, I think this going to
4 require advance rulings. I would like to either be
5 heard outside the presence of the jury, or I would
6 object to this line of questioning as it deals
7 directly with the -- (Inaudible.)

8 THE COURT: All right. The Court is going
9 to excuse the jurors for a few minutes.

10 (Jury not present.)

11 THE COURT: You may be seated.

12 ATTORNEY KRATZ: If I may be heard, Judge?

13 THE COURT: Yes.

14 ATTORNEY KRATZ: Thank you, your Honor.

15 The defense has now introduced into this trial
16 motive, that is, asking this officer, why what
17 Mr. Buting has now identified as several individuals
18 who might have an obvious motive to kill Ms Halbach.
19 The State, as this Court knows, earlier in this
20 case, offered specific evidence, it's called other
21 acts evidence, 904.04 (2), to prove Mr. Avery's
22 motive.

23 Now that the defense has opened the
24 door, now that the defense has suggested that
25 other people have motive, the inferences that

1 Mr. Avery does not, that is a reasonable
2 inference for the jury to draw, based upon Mr.
3 Buting's questioning of this witness. I am at
4 this time, then, Judge, going to ask the Court
5 revisit, or at least allow additional argument on
6 the issue of other acts evidence.

7 If Mr. Buting, who now believes that
8 motive is at issue, Mr. Buting and the defense
9 now believes that motive should be considered by
10 this jury as part of the case, and at least by
11 the inference that Mr. Avery does not have a
12 motive, the State would, once again, reoffer
13 those items, which we specifically offered in
14 pre-trial attempts, to address Mr. Avery's motive
15 directly.

16 This Court has heard, through our
17 opening statement, that we were not going to
18 raise motive as an issue, that we had stayed away
19 because of the Court's previous ruling on this
20 entire issue. But now that Mr. Buting, and now
21 that the defense has raised the issue of motive,
22 I'm going to ask the Court revisit those issues.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: Judge, I have done
25 nothing of the sort. What we're doing here is

1 cross-examination of this officer, who testified
2 that Mr. Avery was the obvious choice of where to
3 start the investigation. All we're talking about is
4 what's going through his mind, at that day, that
5 time, in terms of where to allocate his resources.
6 And I'm demonstrating his bias towards Mr. Avery,
7 and focus on Mr. Avery, to the exclusion of others.
8 That's all this is going into. There's no motive
9 otherwise being introduced.

10 THE COURT: All right. I will make a
11 couple of comments. First of all, the Court, by
12 denying the State's other acts motion, did not
13 prohibit the State from introducing any evidence
14 relating to motive. Rather, the Court simply denied
15 the particular mechanisms, if you will, that were
16 proposed by the State, for other reasons related to
17 the law involving the admission of other acts
18 evidence.

19 With respect to the questions posed by
20 the defense at this point, they don't involve an
21 offer of extrinsic evidence and, therefore, at
22 least at this point, do not raise a **Denny** issue.
23 The Court is well aware of its prior ruling and I
24 will keep my ears open in the event that happens,
25 but I don't believe it's happened to this point.

1 The focus of the questioning, as I understand it
2 to this point, rather goes to decisions that the
3 officer made in the investigation of this matter
4 and other paths of investigation that could have
5 been followed.

6 So I'm going to overrule the objection
7 at this point. If the State believes it's going
8 too far, again, I will reconsider it, again, but
9 I'm only ruling on what I heard to this point.
10 You can bring the jury back in.

11 (Jury present.)

12 THE COURT: You may be seated. Mr. Buting,
13 you may resume.

14 ATTORNEY BUTING: Thank you.

15 BY ATTORNEY BUTING:

16 Q. I believe we left off with you saying, yes, you
17 would certainly like to investigate it. These
18 are the people you were talking about, the
19 roommate or ex-boyfriend?

20 A. That is an avenue that would be approached,
21 absent other circumstances.

22 Q. All right. And wouldn't you also want to, so you
23 don't miss anything, as you said, investigate an
24 employer who doesn't report an employee missing
25 for three days?

1 A. In relation to the employer reporting, related to
2 this case?

3 Q. Yeah, this case.

4 A. That would be something you would look into
5 possibly, yes.

6 Q. All right. But at any rate, you decided that the
7 first place you would start would be Mr. Avery's
8 trailer, residence?

9 A. Based on information that I had, yes.

10 Q. All right. And you put together, actually, a
11 team of four officers, correct?

12 A. A team of four officers was put together, yes,
13 whether I did it specifically, I don't recall.

14 Q. Three of those four officers are Manitowoc
15 Sheriff's Department employees, right?

16 A. Two investigators and one officer -- or sergeant,
17 yes.

18 Q. And they are Lieutenant Lenk, Sergeant Colborn,
19 and Detective Remiker?

20 A. Yes.

21 Q. And then you also had a Calumet Sergeant Tyson?

22 A. Yes.

23 Q. As part of that team. And that team entered
24 Mr. Avery's residence at 7:30 p.m. on November
25 5th, Saturday?

1 A. Yes.

2 Q. And they didn't leave until 10:05 p.m.?

3 A. That's correct.

4 Q. Those four officers, searching Mr. Avery's
5 residence, for over two and a half hours?

6 A. Yes.

7 Q. Both sides are having trouble with the
8 electronics in this courtroom, I'm afraid. Let
9 me try something else, we'll see if I can put on
10 one of the slide exhibits. I'm showing you
11 what's Exhibit 102, I think, yes. We heard
12 testimony about this animation before, right?

13 A. That's correct.

14 Q. And this is accurate, I guess, to the inch, or
15 half inch, or something like that; is that what
16 we heard.

17 ATTORNEY BUTING: Zoom out just a bit,
18 there we go.

19 Q. This is the sum total --

20 ATTORNEY BUTING: Zoom out one little bit
21 to show the whole --

22 Q. This is the sum total of residences that you had
23 four officers in for two and a half hours, on the
24 evening of November 5th, correct?

25 A. Yes.

1 Q. And at that time, they were looking for any
2 evidence, including evidence of a possible
3 homicide, right?

4 A. Yes, sir.

5 Q. They were looking for blood, right?

6 A. Yes.

7 Q. Certainly any indication, maybe, that Teresa
8 Halbach had been in that residence?

9 A. Correct.

10 Q. It's a rather small area to search, as residences
11 go, don't you think?

12 A. I suppose, yes.

13 Q. And they seized 50 some items on that occasion,
14 right?

15 A. I don't know how many items they seized on that
16 occasion.

17 Q. And from your knowledge of the investigation
18 later, none of those items were in anyway linked
19 to Ms Halbach, were they?

20 A. That's probably true. I'm not positive.

21 Q. Okay. We'll follow through with that in a
22 minute. And then they left and quit for the
23 night, and the next day they went to search
24 Mr. Avery's garage; is that right?

25 A. Yes. Make up of the team was a little different,

1 though, I think.

2 Q. I'm sorry, you're right. It was Lieutenant Lenk,
3 Sergeant Colborn, Remiker, the same three
4 Manitowoc officers, right?

5 A. Correct.

6 Q. At this time with Deputy Kucharski -- I believe
7 is the way you pronounce it -- from Calumet?

8 A. Yes.

9 Q. So four more officers, this time searching this
10 one room garage; is that right?

11 A. Yes.

12 Q. For 1 hour and 47 minutes, does that sound right?

13 A. I don't know, sounds right.

14 Q. If I told you they entered at 8:00 a.m. and left
15 at 9:47 a.m. on November 6, Sunday morning, would
16 you disagree with that?

17 A. No, I wouldn't.

18 Q. You also mentioned that later that day, on
19 Sunday, after briefing with you, you determined
20 that the officers had seen a couple of firearms
21 in Mr. Avery's residence, and you wanted to send
22 them back in to retrieve those items, right?

23 A. They talked about several items and, yes, we did
24 want to.

25 Q. And so the same team of four, four officers,

1 Remiker, Lenk, Colborn, and Kucharski, went back
2 into Mr. Avery's residence at 12:25 p.m. on
3 November 6th and left at 12:48 p.m.; would you
4 disagree with that?

5 A. No, I wouldn't.

6 Q. So 23 minutes in his residence, again, right?

7 A. Correct.

8 Q. That's now the third -- I'm sorry, the fourth
9 entry to Mr. Avery's trailer?

10 A. Yes, sir.

11 Q. By law enforcement officers?

12 A. Correct.

13 Q. And then later that evening, Sunday evening?

14 ATTORNEY BUTING: You can put the trailer
15 back on.

16 Q. Later that evening, you had a team from the Crime
17 Lab go back into Mr. Avery's residence, the 5th
18 entry, right?

19 A. Yes.

20 Q. Okay. And that's when you said that they came in
21 with alternate light sources and things of that
22 nature, to try and see if there might be other,
23 you know, bloodstains, or something like that,
24 that might have been missed?

25 A. That night they were looking for blood patterns.

1 It's a different night that they used the
2 luminal.

3 Q. And they indicated a few areas that they thought
4 your officers should at least collect. Maybe
5 they are important, maybe they are not?

6 A. Correct.

7 Q. But they didn't themselves collect it, they left
8 it for your officers?

9 A. To my knowledge, yes.

10 Q. And then you said the next day, which would have
11 been Monday, November 7th, Lieutenant Lenk and
12 Sergeant Colborn, and Sergeant Tyson went back
13 into Mr. Avery's residence again, for the
14 computer?

15 A. To take the serial number off the computer.

16 Q. If I told you that they were in for 7 minutes at
17 9:57 a.m. to 10:04 a.m.; would that fit with your
18 recollection?

19 A. Yes.

20 Q. Now, that's now the sixth entry?

21 A. Yes.

22 Q. By law enforcement to Mr. Avery's residence,
23 right?

24 A. Yes.

25 Q. The following day, the team comes in a little bit

1 smaller. At this time it's just Lieutenant Lenk,
2 and Sergeant Colborn, and Deputy Kucharski,
3 right?

4 A. Yes.

5 Q. This is Tuesday morning, November 8th. If I told
6 you then that they entered at 8:25 a.m. and left
7 at 12:18 p.m.; would that fit with your
8 recollection?

9 A. 8:25. I'm not sure about when they left.

10 Q. All right. And that was the 7th entry to
11 Mr. Avery's residence, and that's the entry that
12 this key was supposedly discovered by Lieutenant
13 Lenk, right?

14 A. Yes, sir.

15 Q. That had been missed in six other entries,
16 correct?

17 A. Yes.

18 Q. And we will hear how it was discovered and how
19 obvious it was, later. I'm not going to ask you
20 about that because you weren't present for the
21 discovery of the key, were you?

22 A. That's correct.

23 Q. You arrived and they said, hey, we have got this
24 key, it's a Toyota key. And you rushed to --
25 Strike that. You come immediately to take a look

1 at the key and see whether or not something else
2 should be done with it, right?

3 A. What should be done with it, yes.

4 Q. Okay. And you mentioned, let's send it to the
5 Crime Lab and see if it will start the ignition
6 of the Halbach vehicle?

7 A. That's right.

8 Q. And then, I'm just going to go through this
9 quickly, on November 9th, you sent Lieutenant
10 Lenk, Sergeant Colborn and Calumet Deputy,
11 Wendling, back into Mr. Avery's residence, again,
12 looking for a garage door opener I think you said
13 it was, or some things like that?

14 A. Yes, garage door opener.

15 Q. Because, what was it, there was a garage door
16 opener found in Teresa Halbach's RAV 4?

17 A. Yes.

18 Q. And there was some concern that maybe that was
19 the killer's, right?

20 A. That was a thought, and so we looked around the
21 property, not just Steven's residence, to see if
22 we could locate whether they were. In fact, we
23 actually brought that thing up, I think the next
24 day or the day after, to see if it opened any
25 garage door.

1 Q. And it turned out to open Teresa's own garage
2 door?

3 A. Yes.

4 Q. So it was unrelated to the crime?

5 A. Yes.

6 Q. And then, again, later on November 9th, Lenk and
7 Colborn and Wendling went back in for 10 minutes,
8 from 11:40 to 11:51, looking for some missing
9 tool; does that ring a bell?

10 A. That I don't recall. They went in a garage.

11 Q. Okay. That was November 8th when they were
12 looking for a garage -- I'm sorry, they were
13 looking for a tool that was missing from a kit
14 that was in Teresa Halbach's car, right?

15 A. Right. That was -- My recollection is that kind
16 of ran together, this tool was discovered
17 earlier, and that was kind of ongoing. And they
18 went in Steven's trailer to look for the garage
19 door opener and saw some pair of women's gloves,
20 I believe. Then they went into the garages, I
21 think they went into Barb's, in her garage, to
22 look for this tool.

23 Q. Okay. So, let me just finish up with the
24 residence first, and then go back to the garage.
25 You do recall, though, that there was an entry,

1 another entry, which would now be the 8th, 9th
2 entry to Mr. Avery's residence, on November 9th?

3 A. November 9th being Wednesday?

4 Q. Yes.

5 A. And that was the garage door opener, yes.

6 Q. Okay. And then you obtained a second warrant,
7 right?

8 A. Yes.

9 Q. And, then, thereafter, Mr. Avery's residence was
10 again entered, three more times, on
11 November 12th, for two hours and four minutes, by
12 Trooper Austin, to take measurements for these
13 helpful animated computer diagrams, right?

14 A. Yes.

15 Q. And, again, on November 12th, this time,
16 yourself, entering briefly, looking for some kind
17 of document, right?

18 A. I think myself and two of the other
19 investigators, looking for some documents, yes.

20 Q. And, then, I think you did one more quick run
21 through at 9:30 on November 12th, shortly before
22 the property was re-released to the Avery's,
23 right?

24 A. Yes, generally you do a final -- a final sweep.

25 Q. I count 12 entries to Mr. Avery's trailer during

1 that week, by law enforcement; would you disagree
2 with that?

3 A. No.

4 Q. Okay. Going back to the garage, I'm not sure, I
5 think I said that after -- that there was the
6 first sweep entry of the garage, right?

7 A. Yes.

8 Q. On the 5th. And then the next morning, when the
9 four officers spent almost two hours in that
10 little garage, on November 6, right?

11 A. Yes.

12 Q. And then there was also one looking for the tool,
13 on November 8th?

14 A. Yes.

15 Q. Lasted about 24 minutes, would you agree with
16 that?

17 A. I'm not sure if that was the 8th or the 9th.

18 Q. One of those two days?

19 A. I thought it was the 9th when they were looking
20 for that emergency roadside tool.

21 Q. Okay. And it wasn't found, right?

22 A. They found a bag that had tools like that in it
23 on a Samurai in there, but did not, ultimately,
24 match up to what we were looking for.

25 Q. And then, without belaboring the point here too

1 much, the garage, Mr. Avery's garage, was entered
2 again on November 9th, for 19 minutes,
3 November 10th, briefly, looking for a hacksaw
4 blade; do you remember that?

5 A. Yes, I believe Agent Sturtivant had done that.

6 Q. And on November 12th, one final time before you
7 released the property?

8 A. Yes.

9 Q. So I count six entries to his garage by law
10 enforcement during that week; would you agree
11 with that?

12 A. Five or six, I wasn't counting along.

13 Q. All right.

14 ATTORNEY BUTING: Judge, do you want to
15 take an afternoon break. Might be a good time.

16 THE COURT: All right. We'll take our
17 afternoon break at this time. Resume at five
18 minutes to three.

19 (Jury not present.)

20 (Recess taken.)

21 THE COURT: Mr. Buting you may resume your
22 cross-examination.

23 ATTORNEY BUTING: Thank you, your Honor.

24 CROSS-EXAMINATION CONTD.

25 BY ATTORNEY BUTING:

1 Q. Couple things I wanted to clear up. You
2 mentioned that some firearms -- one of the
3 entries to Mr. Avery's residence was to secure
4 the couple firearms, and a vacuum brush, or
5 something like that; do you remember that?

6 A. Yes.

7 Q. And that there were other firearms also on the
8 other buildings, other residences?

9 A. Yes, buildings, residences, cars.

10 Q. Including one of the firearms taken from
11 Mr. Avery's residence was a .22 Marlin rifle?

12 A. From Steve's residence?

13 Q. From Steve's -- I'm sorry, from Steven Avery's
14 residence, yes.

15 A. Yes.

16 Q. There were also two other .22 Remington -- I'm
17 sorry, .22 Marlin rifles found elsewhere on the
18 property, right?

19 A. Did you say two others?

20 Q. Right.

21 A. I know there is like another Marlin Glenfield or
22 something.

23 Q. That was in Bobby Dassey's bedroom?

24 A. I'm not even sure if that's where that one was.
25 I'm not aware of the other Marlin, if there was

1 one.

2 Q. Barb Janda's?

3 A. No.

4 Q. No. All right. You also mentioned at one point,
5 I think on November 8th, that the Wisconsin Crime
6 Lab had to be diverted to some potential burial
7 site?

8 A. Yes, some searches that were being conducted off
9 on the perimeter off the Avery properties had
10 come across a suspicious area that they
11 thought -- and I think the dogs actually went by
12 it -- that it could have been a clandestine
13 burial site.

14 Q. Just to clear up, so the jury is not speculating
15 about that, that turned out to be nothing, right?

16 A. That's correct.

17 Q. Okay. All right. Now, one of the things that
18 you did, let's go back to the 5th, to the RAV 4
19 site again.

20 ATTORNEY BUTING: Could we put up No. 86,
21 please.

22 ATTORNEY KRATZ: Me?

23 ATTORNEY BUTING: I'm sorry, is it on ours
24 now?

25 Q. All right. You mentioned that it was -- it

1 looked like it was threatening, like it might
2 rain, and so you were concerned about the
3 elements of the RAV 4 and all that, right?

4 A. Yes.

5 Q. And I'm going to show you Exhibit 118 that you
6 identified yesterday. Just take a look and then
7 I'm going to put that one up on the screen for
8 the jury along with these two. Also, show you
9 Exhibit -- that's a picture -- 118, is when the
10 tarp is just being started to be put over the
11 RAV; is that right?

12 A. It's either when it's being put over or taken
13 off.

14 Q. Okay. It's not completely off, right? You are
15 actually in it, right?

16 A. Yes.

17 Q. You are wearing the red?

18 A. Yes. I just don't know if it's on or off, coming
19 on or off.

20 Q. Okay. And let me put that up on the screen while
21 you take a look at those two exhibits and see if
22 you can identify those. All right.

23 ATTORNEY BUTING: Zoom in on that, that
24 southeast corner, please.

25 Q. Okay. Now, once again, just so no one is

1 confused here, especially the jury, this picture
2 is taken -- Exhibit 86 is after the RAV 4 had
3 been removed from the scene entirely, this is
4 like a different day, right?

5 A. Yes.

6 Q. Could you point where the RAV 4 was, right next
7 to that red vehicle, right?

8 A. Yes.

9 Q. Okay. And Exhibits -- what are they, 143 and
10 144, in front of you?

11 A. Yes.

12 Q. Those are what we're going to put up on the ELMO
13 in a second, but those are photos taken from some
14 place on the north side of this pond, looking
15 towards the RAV 4, while it was still there on
16 November 5th, right?

17 A. I believe so.

18 Q. All right. Then let's try the ELMO, if you don't
19 mind. All right. Just for the benefit of the
20 jury, when we were talking about 118, where we
21 were saying that the tarp is part way on or part
22 way off, whatever, that this is the photo we were
23 talking about, right?

24 A. Yes.

25 Q. And this one is apparently taken from a position

1 somewhere east of the vehicle looking west?

2 A. That's right.

3 Q. Now, at some point, though, the RAV 4 was almost
4 completely covered by this tarp contraption
5 right?

6 A. It was a tarp that we tried to put over the
7 vehicle without touching it, so we were using
8 surrounding trees, or whatever, or cars --

9 Q. Sure.

10 A. -- to do that. So it was more like a cover,
11 canopy type thing that we were trying to
12 accomplish.

13 Q. Okay. And so, we haven't seen any pictures yet
14 of what it looked like when it had -- I think it
15 was probably more than one tarp?

16 A. Not that I remember.

17 Q. You think it's just all one tarp?

18 A. I thought it was. If we used two, I don't
19 recall.

20 Q. Okay. I'm showing you 144 first. And, again, as
21 you testified a moment ago, this is a picture
22 that's taken from some position apparently looks
23 like it's about just on the other side of that
24 detention pond, looking kind of southwest?

25 A. Yes.

1 Q. Okay. And that's what it looked like after the
2 tarp was completely placed on it?

3 A. I would have to agree, only the tarp doesn't look
4 blue there.

5 Q. Okay.

6 A. Might just be the camera.

7 Q. Was the tarp maybe two colored, one side blue,
8 one side gray?

9 A. Possibly, but the first picture showed that the
10 blue side was out.

11 Q. Okay. And so an individual standing -- This
12 appears to be a picture taken, actually, closer
13 to the RAV 4 than one would be if they were
14 standing at the car crusher; would you agree?
15 Isn't that the pond in the foreground right
16 there?

17 A. It looks like it, yeah.

18 Q. Okay. Now, Exhibit 143, looks like maybe is a
19 little bit farther back. I'm going to show you
20 that one right now. Do you see the pond in the
21 foreground there?

22 A. Yes.

23 Q. And the Toyota RAV 4 enclosed or covered by the
24 tarps?

25 A. Yes.

1 Q. So, again, one standing over in this area,
2 watching what might have been going on, or just
3 taking a look at the scene, wouldn't have been
4 able to see the RAV 4 at all, because it was
5 covered; is that right?

6 A. Yes.

7 Q. So the tarps --

8 ATTORNEY BUTING: Your Honor, would it be
9 alright if I published these to the jury, since it's
10 not all that easy to see on the ELMO.

11 THE COURT: We don't have slides of these?

12 ATTORNEY KRATZ: Sure. You didn't ask me
13 to do that.

14 ATTORNEY BUTING: I couldn't find any. I
15 don't know.

16 THE COURT: Why don't the two of you get
17 together, off the audio, and see if you can find
18 them quickly. If not --

19 ATTORNEY KRATZ: Which one do you want up
20 first, counsel?

21 (Off record.)

22 Q. (By Attorney Buting)~ Okay. That is 144, now
23 we're looking at the screen, it has a 144 on it,
24 I believe, doesn't it. Yeah. And then could you
25 -- Just leave it there for a minute. So the

1 purpose for the tarp, at least as far as you were
2 concerned, was to try and protect the vehicle
3 from the elements, if it started raining, right?

4 A. The vehicle, the items covering or concealing it,
5 yes.

6 Q. Okay. And so you tried to drape these over
7 branches and things to not actually touch it?

8 A. Correct.

9 Q. So that there was room around it like,
10 particularly in between the vehicles and --
11 almost looks like that's a tent type opening or
12 something on the one side of it, right?

13 A. I don't know.

14 Q. All right.

15 ATTORNEY BUTING: Well, that's okay. Just
16 show the other one and then we'll be done with this
17 topic.

18 ATTORNEY KRATZ: Which exhibit number,
19 counsel?

20 ATTORNEY BUTING: That one is 143, isn't
21 it, Special Agent Fassbender?

22 THE WITNESS: Yes.

23 ATTORNEY BUTING: All right.

24 Q. (By Attorney Buting)~ All right. Now, when you
25 searched the property, I mean, you walked around

1 the property over the course of a week, right,
2 and you became familiar yourself with various
3 buildings and their locations?

4 A. To a degree. We were quite busy in the command
5 center that we didn't do that a lot, but to a
6 degree.

7 Q. Well, were you aware from your searches that
8 there was an aluminum smelter located on the
9 property?

10 A. I was informed of that, I never saw it
11 personally.

12 Q. Could we -- Let me mark this and see if this
13 refreshes your recollection.

14 (Exhibit No. 145 marked for identification.)

15 Q. (By Attorney Buting)~ I'm showing you Exhibit
16 145, tell me if you have ever seen that, or ever
17 saw that during that week?

18 A. No.

19 Q. No. Okay. Well, we'll save this exhibit then.
20 Nevertheless, you were told that there was an
21 aluminum smelter on the property?

22 A. Yes.

23 Q. And that, in fact, at some point during the
24 investigation you were aware that there was
25 someone sent an anonymous letter, that was found

1 at the Green Bay Post Office, that said, body was
2 burnt up in aluminum smelter, 3 a.m., Friday
3 morn, right?

4 A. I'm aware of that letter. The exact verbiage,
5 I'm not sure, but something to that effect, yes.

6 Q. All right. And it was contained in an envelope
7 from the Green Bay Police Department, that had a
8 big sticker on it, flourescent green, that said
9 check for latents, right?

10 A. I believe so, yes.

11 Q. Now, that letter sat in the property department
12 of Calumet Sheriff's Department until I
13 discovered it, just this past November; isn't
14 that right?

15 A. Until you discovered it?

16 Q. Until I pointed it out to you?

17 A. That's where it was, yes.

18 Q. You and Mr. -- Investigator Wiegert were present
19 when I found this particular letter in the
20 property inventory, right?

21 A. Yes.

22 Q. And was only then that it was sent to the Crime
23 Lab to be analyzed for any sort of prints or
24 anything, right?

25 A. I believe so, yes.

1 Q. Is that because the body being burnt in the
2 smelter didn't fit your theory that Mr. Avery was
3 guilty of this crime?

4 A. I felt it didn't fit the facts and the evidence.
5 That smelter was examined by arson investigators
6 and they determined that it didn't appear to have
7 been used for a while.

8 Q. Did you suggest any DNA or the anthropologist
9 examine it to see if there were any bone
10 fragments?

11 A. The particular arson investigator that examined
12 that is the one that found most of the bone
13 fragments in the burn area.

14 Q. And if that smelter had been used to burn the
15 body, though, that would really tend to indicate
16 that Mr. Avery wasn't guilty of this crime,
17 because it would not make sense to burn the body
18 in the smelter, take the bones and place them on
19 your own backyard, would it?

20 ATTORNEY KRATZ: Objection, speculation.
21 Judge, we're not getting into what makes sense about
22 what Mr. Avery did, are we?

23 THE COURT: I will sustain the objection.

24 ATTORNEY BUTING: All right. I will move
25 on.

1 Q. (By Attorney Buting)~ Let me just fast forward a
2 little bit here to February and March of 2006,
3 okay. Are you with me?

4 A. Yes.

5 Q. All right. By that time, through all of your
6 investigation, you knew that as of that time, you
7 had found no physical evidence linking Teresa
8 Halbach to Mr. Avery's trailer or garage right up
9 to February 28th?

10 A. I don't believe that's accurate.

11 Q. What did you find?

12 A. We found shell casings in the garage that did
13 match up to the rifle in the house.

14 Q. This is a junkyard, people shoot guns all the
15 time, right? I mean, you found shells all over
16 the place, 40 acres, right?

17 A. Oh, certainly, yes.

18 Q. Junkyard, these people were sighting rifles, you
19 knew that, shooting rabbits, the mere existence
20 of shells, without a link to a particular body,
21 doesn't prove anything, does it?

22 A. I don't know if at that time our anthropologist
23 had indicated -- I can't -- indicated that there
24 was possible bullet holes in the skull or not,
25 but that would be --

1 Q. But if there were, the shells didn't link to that
2 anyway, did they?

3 A. The shells linked to a rifle found in the
4 trailer, that's all it was.

5 Q. Right, which could have had nothing to do with
6 this offense, as far as you knew, at that time?

7 A. It could have been, you know, we just -- No, we
8 didn't know.

9 Q. Okay. And you mentioned on direct, something
10 about blood stains, and the Crime Lab finding
11 little extra areas. So the jury is not left
12 speculating for the next week, about whether
13 those were ever found to be Teresa Halbach, they
14 were not; isn't that right?

15 A. That's correct.

16 Q. None of those blood stains matched anyone except
17 Mr. Avery?

18 A. Yes.

19 Q. All right. And it was only on a subsequent
20 search, around March 1st and 2nd, that a bullet,
21 any bullets, any fragments of bullets, or bullets
22 themselves, were found in Mr. Avery's garage,
23 right?

24 A. Yes, sir.

25 Q. Now, were you present for the execution of search

1 warrants for Mr. Avery's trailer and garage,
2 again, on March 1st and March 2nd?

3 A. March 1st only, I believe, and just the
4 beginning, the execution of it and maybe half
5 hour, hour.

6 Q. Okay. And you are aware that they were doing
7 more of these logs, checking people in and out of
8 the scene, as should be standard procedure,
9 right?

10 A. Yes.

11 Q. And you are probably on here somewhere, there you
12 are. If you could identify Exhibit 147 for me,
13 please.

14 A. This looks like a entry log dated March 1, 2006,
15 at 3:30, 1530 hours, Avery Road, State Trunk
16 Highway 147. This would have been a log-in sheet
17 out away from the two scenes of the residence and
18 the garage. More of an entry type log-in
19 sheet --

20 Q. All right.

21 A. -- for everyone coming down that road.

22 Q. So anybody who is coming back on the Avery
23 salvage property, that 40 acre area; is that
24 right?

25 A. I believe so, yes.

1 Q. And Exhibit 146 -- I had those backwards, sorry.

2 A. And this is March 2 appearing to be the same type
3 of log -- sign-in log, probably in the same area,
4 more of entry log --

5 Q. Okay.

6 A. -- for that area.

7 Q. All right. You arrived at 1735, 5:35 p.m.,
8 right?

9 A. Yes.

10 Q. Can you tell me who arrived at 6:10?

11 A. 1810 hours, Lieutenant Lenk from Manitowoc County
12 Sheriff's Department.

13 Q. Lieutenant Lenk. Did you ask him to come to the
14 scene?

15 A. I don't recall if I personally asked him to come
16 to the scene or not.

17 Q. This was now five months after the original
18 searches for that week of November,
19 approximately?

20 A. About four months, yes.

21 Q. Certainly wasn't necessary, on that occasion, for
22 Mr. Lenk to arrive, to be somebody who would help
23 search Mr. Avery's residence or garage again, was
24 it?

25 A. No, I don't believe he did search there. I think

1 some of his personnel were there. And he, as
2 their supervisor, I don't know if that's why he
3 stopped out there.

4 Q. Is that his name squeezed in there, almost as an
5 afterthought, on the second to the last line?

6 ATTORNEY KRATZ: I'm going to object. It's
7 argumentative, Judge, as afterthought, it's
8 absolutely improper.

9 ATTORNEY BUTING: I'm sorry, counsel is
10 right.

11 THE COURT: All right. I take it the
12 question is being withdrawn.

13 ATTORNEY BUTING: I will withdraw the
14 question, yes, thank you, sir.

15 Q. And do you see Mr. Lenk again at the scene the
16 following morning?

17 ATTORNEY KRATZ: I'm going to object,
18 didn't Mr. Fassbender say he wasn't there the next
19 day?

20 THE COURT: Mr. Buting, you might want to
21 rephrase the question.

22 Q. (By Attorney Buting)~ Did you see Mr. Lenk's name
23 on Exhibit 146 as having logged in and entered
24 the scene, again, the morning of March 2nd?

25 A. Yes.

1 Q. And at what time would that be?

2 A. 8:49 a.m.

3 Q. All right. I will put it up quickly on the ELMO.

4 Now, this search is the search that -- that --

5 where a couple of bullet fragments were

6 discovered, right?

7 A. Yes.

8 Q. Five months after the previous searches, four

9 months, my math is bad I guess, four months?

10 A. Yes.

11 Q. Okay. And it's not like you weren't looking in

12 the first search, or having your officers look in

13 that first -- what was it, five entries to his

14 garage, the week of November 1st, or 5th to the

15 12th, they were looking for small items like

16 that, right?

17 A. Some of those searches were very specific for

18 items, some were not. Some were overall

19 searches.

20 Q. Okay. And, in fact, in one of the searches, one

21 of those five entries at least, police did

22 recover, you said, a number of shells to a .22

23 rifle?

24 A. Shell casings laying on the floor.

25 Q. Okay. So, not much bigger than the bullet

1 fragments that were found on March 1st and 2nd?

2 A. Actually, probably quite a bit bigger, in
3 comparison. If you have a bullet fragment like
4 that, and a shell casing like that.

5 Q. But this was your crack team of searchers, right,
6 the best you had out there?

7 A. This is the team I sent there, yes.

8 Q. Okay. And they did bring shells back, but no
9 bullets, right?

10 A. The shells were laying in the middle of the
11 floor, basically.

12 Q. At that time, though, none of the investigators
13 knew that there would be evidence from the
14 anthropologist that suggested that perhaps Teresa
15 Halbach had actually been shot in the head, with
16 cranial pieces, did they? That information came
17 later?

18 A. True, yes.

19 Q. Shortly before this March 1st and March 2nd
20 search?

21 A. I don't know. I'm not sure when that information
22 came.

23 Q. So -- Well -- Let me just see if I can refresh
24 your recollection. Well, I don't want to waste
25 time right here, but -- At any rate, I will move

1 on. By that time you did know, though, that --
2 and that is, what I'm talking about here is, by
3 March 1st and March 2nd, of 2006, which are
4 important dates in this investigation, you know
5 this, right?

6 A. Yes.

7 Q. Additional search warrants were issued, right?

8 A. Yes.

9 Q. By that time, you knew that the mattresses, both
10 bedroom mattresses had been thoroughly examined
11 by -- visually and otherwise, for blood, and no
12 blood was found, right?

13 A. By March 1st and 2nd?

14 Q. Yeah, before that date. You know officers had
15 gone into the -- stripped the bedding, right?

16 A. Yes, I just don't recall if we took the
17 mattresses.

18 Q. Okay.

19 THE COURT: Mr. Buting, can you specify
20 what mattresses we're talking about?

21 ATTORNEY BUTING: Okay.

22 THE COURT: I'm not sure that was done.

23 Q. (By Attorney Buting)~ All right. Let me put it
24 this way, in the first -- What did we have, 12
25 entries to Mr. Avery's residence, no blood was

1 seen on the mattress in Mr. Avery's bedroom,
2 right?

3 A. I don't believe so.

4 Q. And no blood was seen on any of the sheets or
5 bedding?

6 A. I believe that's correct.

7 Q. And you have been to the murder -- I don't know
8 how many murder scenes you have been to, but you
9 have been to bloody murder scenes before, right?

10 A. Yes.

11 Q. Stabbings?

12 A. Yes.

13 Q. You are familiar with castoff blood spatter?

14 A. Yes.

15 Q. That is, if somebody is stabbing a person who's
16 laying on a mattress in the middle of Mr. Avery's
17 bedroom, repeatedly, there may be blood spatter
18 on the ceilings and walls from the knife?

19 A. There may be.

20 Q. And there was none in this case, right?

21 A. None that we found.

22 Q. And no clumps of a woman's hair that were found
23 cut off anywhere in the bedroom?

24 A. That's correct.

25 Q. No trail of blood as one would expect if you

1 carry a body that's been stabbed, on the mattress
2 of Mr. Avery's bedroom, through the house and out
3 the backdoor?

4 A. Unless it was cleaned up, no, we didn't see
5 anything.

6 Q. And outside on the back porch or on the front
7 porch, that wooden deck, no blood trail dripping,
8 right?

9 A. If they would have went that way. They could
10 have went out the backdoor also.

11 Q. All right. Which has a little stoop, concrete
12 steps?

13 A. Yes.

14 Q. No blood in their, right?

15 A. Not that I know of.

16 Q. No blood trail leading into the garage of
17 Mr. Avery, or out?

18 A. Into the garage, or out? Outside the garage, no,
19 not that I know of.

20 Q. Okay. And inside the garage, a few blood stains,
21 but not Teresa Halbach's blood, right?

22 A. Correct.

23 Q. So, in short, then, by March 1st and March 2nd,
24 when those search warrants were issued, four
25 months of investigation had found not one shred

1 of Teresa Halbach's DNA anywhere in Mr. Avery's
2 trailer or garage; isn't that right, sir?

3 A. Yes.

4 Q. Thank you.

5 THE COURT: All right. Redirect, Mr.
6 Kratz?

7 ATTORNEY KRATZ: Absolutely.

8 **REDIRECT EXAMINATION**

9 BY ATTORNEY KRATZ:

10 Q. Agent Fassbender, describe for the jury the
11 circumstances surrounding what Mr. Buting now
12 calls the discovery of this letter from Green
13 Bay; why were you with Mr. Buting?

14 A. Mr. Buting was being allowed to look at the
15 evidence that was in our possession or in the
16 Calumet County's possession.

17 Q. Do you remember who else was present?

18 A. I believe Attorney Strang was there also.

19 Q. Do you remember Mr. Gahn being there?

20 A. Yes.

21 Q. Do you remember Mr. Buting asking the prosecution
22 if that letter could be dusted for prints?

23 A. Yes.

24 Q. Do you remember agreeing to do that for
25 Mr. Buting?

1 A. Yes.

2 Q. Not forcing Mr. Buting to go to his own lab, but
3 you would do it for him; is that right?

4 A. That's correct.

5 Q. And even though this letter had to do with the
6 smelter, had you already eliminated the smelter
7 as a place where Ms Halbach could have been
8 burned in this case?

9 A. Yes.

10 Q. Now, wait a second, you have already eliminated
11 the smelter and this letter has nothing to do
12 with the case, why did you send it off for prints
13 for Mr. Buting?

14 A. Because he asked us to do it.

15 Q. Mr. Buting also asked you to look at some photos
16 today. I think it's Exhibit 142 and 143, of some
17 tarps; do you still have them up here?

18 A. No, I don't.

19 ATTORNEY KRATZ: Do you know where those
20 exhibits are?

21 ATTORNEY BUTING: I will get them, I think
22 I put them back. Just 142 and 143?

23 ATTORNEY KRATZ: For now.

24 Q. Is this Exhibit 142, Mr. Fassbender?

25 A. No, I have got 143 and 144 here.

1 Q. Well, look at the screen here. I want to know
2 which exhibit this is.

3 A. That -- I believe that's 144, yes, 144.

4 Q. All right. Mr. Buting asked if, from this
5 vantage point, if a law enforcement officer would
6 be able to see the SUV; do you remember that
7 question?

8 A. Yes.

9 Q. What was your answer?

10 A. Well, I can see where the SUV was tarped.

11 Q. All right. You can't see the SUV, though, can
12 you?

13 A. No.

14 Q. Do you know where you were when this picture was
15 taken?

16 A. I may have been by the SUV doing the tarping.

17 Q. That's 143 and 144. This was the second exhibit
18 that Mr. Buting showed you. Do you have this up
19 there, Mr. Fassbender?

20 A. 143, yes.

21 Q. Once again, the suggestion that if you were from
22 this location you couldn't see if somebody was
23 approaching or tampering with the vehicle?

24 ATTORNEY BUTING: I object to that specific
25 suggestion. That wasn't my question.

1 ATTORNEY KRATZ: Certainly the inference,
2 Judge, that's why he showed it, otherwise it has no
3 relevance.

4 THE COURT: Why don't you rephrase the
5 question?

6 ATTORNEY KRATZ: All right.

7 Q. Do you remember Mr. Buting's line of questioning
8 about not being able to see this vehicle?

9 A. Yes.

10 Q. Okay. Now, as we learned earlier in this trial,
11 you put your cursor over a digital photo, says
12 the date that it was taken, 11/5 and 4:16 p.m.;
13 do you see that on the screen?

14 A. Yes.

15 Q. Okay. And exactly the same time and date as the
16 previous picture; do you see that?

17 A. Yes, I do.

18 Q. The picture right before that that Mr. Buting did
19 not want you to see --

20 ATTORNEY BUTING: Objection to that.

21 THE COURT: Sustained.

22 ATTORNEY KRATZ: I will rephrase it.

23 Q. (By Attorney Kratz)~ The picture that Mr. Buting
24 did not show the jury shows a bunch of people
25 walking up at the same time, the same location,

1 towards the SUV; do you see that picture?

2 A. Yes, I do.

3 Q. And whether or not Mr. Buting has it in his
4 possession, are you one of those people?

5 A. Yes.

6 Q. Are you walking towards that tarped SUV that
7 Mr. Buting suggested you couldn't see?

8 A. Yes.

9 Q. One picture after, that Mr. Buting didn't show,
10 you see some other officers walking towards that
11 tarped vehicle?

12 A. Along with myself, yes.

13 Q. Same time, same location, same tarped vehicle; is
14 that right?

15 A. Yes.

16 Q. Let me ask you, Agent Fassbender, do you believe
17 that at the time that these photos were taken you
18 were in a position to see if anybody either
19 tampered with or entered that vehicle?

20 A. Almost certainly.

21 Q. Under whose control was that particular vehicle
22 at that particular time?

23 A. The Calumet County deputy.

24 Q. Agent Fassbender, the defense attorney,
25 Mr. Buting, asked -- and, in fact, I wrote down

1 his question -- whether or not on the 5th of
2 November, the first search by Messrs. Tyson and
3 Remiker, whether or not there was any evidence
4 that was found that was linked to Ms Halbach; do
5 you remember that question?

6 A. Yes.

7 Q. Do you remember what your answer was?

8 A. I believe it was no.

9 Q. Okay. Do you remember, on that first search, a
10 note with Ms Halbach's phone number being seized
11 from Mr. Avery's computer table?

12 A. Yes, I do.

13 Q. And that note, with Ms Halbach's phone number,
14 had the words "back to patio door"; do you see
15 that?

16 A. Yes, I do.

17 Q. Do you recall, now, that that was seized on
18 November 5th?

19 A. Yes.

20 Q. Would you say that that is some evidence that was
21 seized on the 5th that is obviously linked to Ms
22 Halbach?

23 ATTORNEY BUTING: Your Honor, I'm sorry.
24 Do you have a copy that we could mark, please.

25 ATTORNEY KRATZ: I do. I can have this

1 marked. What I will do, Judge, is state for the
2 record that it is Item No. 041. That item number
3 corresponds to discovery that defense was sent.
4 Unless there is an objection by counsel, I will
5 replace it with an exhibit number. We can certainly
6 do that, your Honor.

7 THE COURT: What is the next exhibit
8 number?

9 THE CLERK: 148.

10 (Exhibit No. 148 marked for identification.)

11 THE COURT: All right. Let's make it 148.

12 ATTORNEY BUTING: That's fine. I just
13 wanted it marked for the record.

14 ATTORNEY KRATZ: I appreciate it. Thank
15 you, counsel.

16 (Exhibit No. 149 marked for identification.)

17 Q. What will be Item No. 149, seized from the same
18 computer table, is another sign with Ms Halbach's
19 phone number; is that correct?

20 A. That's correct.

21 Q. Was that seized on the 5th of November as well?

22 A. Yes, it was, sir.

23 Q. This address, 3302 Zander Road, we'll get into
24 that with other witnesses, but do you now believe
25 that this is connected to Ms Halbach? It's her

1 phone number, isn't it?

2 A. That's her phone number, yes.

3 (Exhibit No. 150 marked for identification.)

4 Q. Now, what will be Item 150, do you recall, now,
5 that an Auto Trader Magazine was seized from
6 Mr. Avery's residence that evening?

7 A. Yes, I do.

8 Q. This is the identical Auto Trader Magazine that
9 Ms Zipperer received, that she had testified
10 earlier; you were in court when that was
11 testified to, wasn't it?

12 A. Yes.

13 (Exhibit No. 151 marked for identification.)

14 Q. Also identically to Ms Zipperer, what will be
15 Exhibit No. 151, was a bill of sale also found on
16 Mr. Avery's computer table, again, identical to
17 that received by Ms Zipperer. Do you recall that
18 now being seized on the 5th of November, don't
19 you?

20 A. Yes, I do.

21 Q. Let me ask you, Mr. Fassbender, do you know how
22 many items of physical evidence were seized in
23 this case alone, the Avery homicide
24 investigation?

25 A. Upwards of 970.

1 Q. Can you remember all 970 items of evidence that
2 were seized?

3 A. No, I can't.

4 Q. Mr. Buting asked you if knowing that Mr. Lenk and
5 Mr. Colborn was involved in a deposition, whether
6 or not you would assign them to search
7 responsibilities; do you remember that question?

8 A. Yes, I do.

9 Q. Do you remember answering yes to that question?

10 A. Yes.

11 Q. Do you have an explanation for that answer?

12 A. Yes.

13 Q. What is that explanation?

14 A. My explanation is, if they told me that, I would
15 have asked them what the circumstances
16 surrounding that were. Upon them telling me, and
17 what I know now of those circumstances to be, I
18 know there was no direct conflict of
19 interest with those two individuals.

20 They weren't working when he was charged
21 and convicted on the original charge. And when
22 they got deposed, Mr. Colborn was a jailer in
23 that jail and he received a call from another
24 jail that an anonymous person said something
25 about them having the wrong person in jail and

1 they have the right one. Didn't identify who it
2 was, what it was about.

3 Mr. Colborn did the right thing and
4 forwarded that phone call to the Detective's
5 Bureau. Mr. Colborn was not even a sworn
6 officer. Mr. Lenk wasn't even a detective at the
7 time. He was working the road. That call went
8 up to the Detective Bureau and was handled by
9 whoever was up there at that time. And, then,
10 when Mr. Avery was exonerated, Mr. Colborn made a
11 comment to Mr. Lenk, something to the effect
12 that, boy, I wonder if that call they took way
13 back when was Mr. Avery. They had nothing to do
14 with this.

15 Q. So that, as far as you know, was Lenk and
16 Colborn's connection, this mysterious connection
17 to this civil lawsuit; is that right?

18 A. Yes.

19 Q. Knowing that, as you sit here today, as the lead
20 investigator in the case, have any problems at
21 all with Lenk or Colborn's involvement in this
22 case?

23 A. Absolutely not.

24 Q. Do you know how many law enforcement officers,
25 how many citizens, and how many other witnesses

1 were deposed as part of that lawsuit?

2 A. No, I don't.

3 Q. Finally, Agent Fassbender, whenever a Manitowoc
4 County Sheriff's deputy was asked to assist in
5 this entire investigation, that is, when any
6 search was done out at the scene, were they
7 accompanied by a Calumet County or State DCI
8 agent?

9 A. Yes.

10 ATTORNEY KRATZ: That's all the redirect I
11 have, Judge.

12 THE COURT: Any recross, Mr. Buting?

13 ATTORNEY BUTING: Just a bit.

14 **RECROSS-EXAMINATION**

15 BY ATTORNEY BUTING:

16 Q. Now, you weren't deposed in this civil lawsuit
17 yourself, right?

18 A. That's correct.

19 Q. You had nothing to do with it, you were a truly
20 independent, objective investigator at that
21 scene?

22 A. Yes.

23 Q. Okay. Lenk and Colborn, though, were deposed
24 about their own conduct, in 1996, regarding a
25 phone call that might have resulted in

1 Mr. Avery's spending eight more years in prison
2 because of the way they handled it, right?

3 A. I believe the way they handled it was correct.

4 Q. Well, what you believe, sir, isn't really the
5 issue. The question is what they believe.

6 A. And I can't speak to what they believed.

7 Q. That's right, you can't. Thank you. The point
8 of the matter is, also, that neither one of them
9 told you about this connection.

10 ATTORNEY BUTING: You can take that -- or
11 leave it on for a minute.

12 Q. Neither one of them told you that they had been
13 witnesses in a civil lawsuit, did they?

14 A. That's correct.

15 Q. And both of them volunteered to go search
16 Mr. Avery's residence, didn't they?

17 A. I don't know if they volunteered or they were
18 asked, but they did it.

19 Q. All right. They did, though?

20 A. Yes.

21 Q. Yeah. And both of them knew, or you could tell
22 us if you thought that they knew, that their boss
23 had already found enough of a conflict, or
24 appearance of conflict, with Mr. Avery's lawsuit,
25 to turn over authority to a neighboring county.

1 They knew that?

2 A. I would assume they knew that.

3 Q. Okay. And with that knowledge, they still didn't
4 say, oh, hey, by the way, we should tell you
5 about this deposition that we both had three
6 weeks earlier, did they?

7 ATTORNEY KRATZ: Objection, asked and
8 answered, three times now, Judge.

9 THE COURT: I'm going to sustain the
10 objection.

11 ATTORNEY BUTING: All right.

12 Q. (By Attorney Buting)~ You recall my questions to
13 you about whether any items linked to Teresa
14 Halbach, was whether any physical evidence linked
15 her inside his trailer or garage, right?

16 A. Possibly, I don't remember if it was physical
17 evidence or not.

18 Q. All right. This bill of sale has no date, could
19 have been any time, right?

20 A. Correct.

21 Q. The phone number for Teresa Halbach being in his
22 residence is certainly not a surprise, because we
23 know from the records that he had her phone
24 number and had called and arranged a sale just a
25 few weeks earlier, right?

1 ATTORNEY KRATZ: Objection, argumentative,
2 Judge. The question was whether there was anything
3 that linked Teresa Halbach to that trailer.

4 ATTORNEY BUTING: That was your question,
5 that was not my question.

6 THE COURT: Well, at this time, it was not
7 my understanding that the subject matter was the
8 strength or probative value of the evidence, but
9 rather just whether any evidence had been seized.
10 I'm not sure where we're going.

11 ATTORNEY BUTING: Okay.

12 Q. (By Attorney Buting)~ None of those four
13 prospective exhibits ever show that Teresa was
14 inside the trailer, do they?

15 A. No.

16 ATTORNEY BUTING: Thank you. That's all I
17 have.

18 **FURTHER REDIRECT EXAMINATION**

19 BY ATTORNEY KRATZ:

20 Q. That's evidence that Bobby provided; isn't that
21 right?

22 A. That's correct.

23 ATTORNEY KRATZ: That's all I have. Thank
24 you, Judge.

25 ATTORNEY BUTING: I object, move to strike

1 the question and the answer because it's not the
2 testimony. Bobby Dassey never said he saw her in
3 the trailer.

4 THE COURT: I'm not sure I understood the
5 question, the question that's being objected to.

6 ATTORNEY BUTING: That was a clear
7 inference on counsel's question, if not the direct.

8 THE COURT: I'm going to sustain the
9 objection. I think it's beyond the scope of
10 redirect. Witness is excused.

11 Mr. Kratz, we'll let the State get
12 started on the next witness.

13 ATTORNEY KRATZ: If you would like, Judge,
14 we will call Mr. Brandes to the stand.

15 THE COURT: The jurors may stand up and
16 stretch, if you wish, before the next witness takes
17 the stand.

18 THE CLERK: Please raise your right hand.

19 **WILLIAM BRANDES, JR.**, called as a
20 witness herein, having been first duly sworn, was
21 examined and testified as follows:

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

24 THE WITNESS: William Brandes, Jr.,
25 B-r-a-n-d-e-s.

DIRECT EXAMINATION

1
2 BY ATTORNEY KRATZ:

3 Q. Mr. Brandes, thank you for coming. And can you
4 tell the jurors, please, from what community you
5 come?

6 A. Brillion, Wisconsin.

7 Q. And I think everybody knows where Brillion is,
8 but in case they don't, tell the jurors, where
9 Brillion is located.

10 A. Right near the Manitowoc/Calumet border, right in
11 Calumet County, about 15 miles from here.

12 Q. Mr. Brandes, on the 8th of November of 2005, were
13 you asked and did you in fact participate in a
14 volunteer search of the Avery Salvage Yard?

15 A. Yes, I did.

16 Q. And in what capacity did you assist in that
17 search?

18 A. I was with a group of State troopers and other
19 volunteer firemen, I believe, searching a search
20 section of the Avery junkyard.

21 Q. Were you assigned or paired up with somebody?

22 A. I don't know about paired up, but there was a
23 group of maybe 10 of us, maybe a few more.

24 Q. Were there -- Again, from what organization were
25 you volunteering?

1 A. The Brillion Fire Department.

2 Q. Were there any sworn law enforcement officers in
3 your group?

4 A. Yes, the Wisconsin State troopers were with us.

5 Q. All right. And, again, about how many people
6 were in your search team?

7 A. Roughly 10, maybe a few more.

8 Q. Do you know how many volunteer or firefighter and
9 law enforcement searchers were involved on the
10 8th?

11 A. Quite a few, not offhand.

12 Q. Okay. What were your responsibilities that day;
13 what did you do?

14 A. We were just given a section to search and search
15 every vehicle, very thoroughly, around it, and
16 see if there was anything that looked out of
17 place or might seem suspicious. And we were also
18 instructed that they were looking for certain
19 items, what the victim had been wearing, a
20 certain shirt and jeans, you know, that might be
21 that. And license plates they were looking for.
22 And there was some -- I think that was about it.

23 Q. All right. Did you assist and did you help
24 perform searches of these vehicles?

25 A. Yes.

1 Q. Tell the jury what kind of searches these were;
2 how did you search the vehicles?

3 A. You just slowly go over each vehicle. And there
4 were multiple people going over them. Go inside
5 them. If you couldn't get the trunk open, some
6 of them they pried the trunk open. Or you just
7 looked through them real good. Anything like
8 clothing or something, you actually took it out
9 and probably handled it. Looked around, you
10 know. Looked under stuff, if you could, just to
11 find out what you could find.

12 Q. About how many vehicles did you search that day,
13 personally; do you recall?

14 A. Yeah, quite a few, maybe 50.

15 Q. All right.

16 A. Maybe more.

17 Q. I'm sorry to interrupt you. Do you remember the
18 area or was there a specific area that you were
19 assigned to search?

20 A. Yes.

21 Q. What area was that?

22 A. As you went in, it was more to the right, around
23 the back of a shed and toward, kind of like a
24 fence line that was on the Avery property.

25 Q. You have some photos in front of you; is that

1 right?

2 A. Yes.

3 Q. First photo, I think it's Exhibit 139; is that
4 right?

5 A. I have no numbers.

6 Q. Let's look on the back?

7 A. Oh, sorry.

8 Q. There you go.

9 A. Yup, 139.

10 Q. Thank you. Can you tell the jury, what is
11 Exhibit 139, please.

12 A. That is the station wagon I found the license
13 plates in.

14 Q. You recognize the photo in 139; is that right?

15 A. Yes.

16 Q. We're just going to talk about that one first,
17 for a minute. Going to show the jury, now,
18 what's been identified as Exhibit No. 139. And
19 if you could refer to the large screen up here
20 for us; tell us what we're looking for? There's
21 a laser pointer, if that will help you.

22 A. You are actually looking -- I don't know what the
23 direction is, I think it's toward the south. But
24 there's a road they are standing on, that's the
25 edge of the property. And it's right along a

1 fence line that kind of contains the property.

2 And from where you are standing, to your
3 left would be the entrance to the property. You
4 would actually go through that and around that
5 blue building to come in; that's the way we came
6 in.

7 Q. Do you recognize this station wagon?

8 A. Yes.

9 Q. Did you search or look in this station wagon?

10 A. Yes.

11 Q. Tell the jury how you did that, please.

12 A. I was just walking along. I was actually on the
13 driver's side searching. And there were a bunch
14 of weeds. We crawled through the weeds and
15 looked in.

16 And I looked -- I peered in the back and
17 behind what would be the passenger side seat.
18 The back seat was folded down flat. And behind
19 the passenger side seat was a set of what ended
20 up to be license plates, but at that time were
21 folded like in three different -- folded twice
22 inward, so you could not see a number or the --
23 anything on them.

24 Q. The license plates were folded, describe that for
25 me.

1 A. Like, if you take them and fold them in with one
2 thumb and then fold the other one on top again so
3 they were like pinched together.

4 Q. The plates were folded?

5 A. Yes.

6 Q. Were you wearing any protective items on your
7 hands at the time?

8 A. I -- Just gloves that I had owned.

9 Q. All right. You had gloves on?

10 A. Yeah.

11 Q. What did you do when you found that item in this
12 vehicle?

13 A. I picked them up. And when I figured out they
14 were license plates, I had slowly peeled them
15 open. And I wasn't quite sure with the number on
16 them, but I thought I had something, so there was
17 a State trooper next to me and I asked her what
18 the number was. She repeated it because she had
19 written it down.

20 Q. That number, what number are you talking about?

21 A. The license plate number inside. Because they
22 were folded in, you couldn't read them until I
23 unfolded them. And when she confirmed that them
24 were the license plates we were looking for, I
25 gently set them back down inside the car.

1 Q. Did you call over the law enforcement officer,
2 the trooper, to then take over or take control of
3 the plates?

4 A. Yes, she was actually, like, standing right next
5 to me.

6 Q. Okay. After the plates were set back down, do
7 you recall a photograph being taken of those?

8 A. Yes.

9 Q. And how did that occur; do you know?

10 A. They rode in and there were a bunch of people
11 that came in. We actually didn't move and I
12 think an investigator came in and photographed
13 it.

14 Q. Okay. We have put another picture in front of
15 you; what is that? It's No. 140; is that right?

16 A. Yes. That was taken from the -- I believe the
17 passenger side, kind of right over the fence.
18 And that's where they were laying, right in there
19 in the back of the seat -- or on the seat in the
20 back.

21 Q. Does that show the interior of the vehicle, the
22 location where you found the plates?

23 A. Yes.

24 Q. And now, I will have the jury look at Exhibit No.
25 140. Referring to the large exhibit, then, can

1 you tell us what that is?

2 A. That's on -- like -- like, right under that fence
3 wire would be where the plates were located.

4 Q. Why don't you take that laser pointer -- and I
5 know this may not be comfortable for you, but
6 show us where you found the plates.

7 A. Right in that general area there.

8 Q. And they were folded in thirds?

9 A. Yes.

10 Q. And when you looked in that vehicle, could you
11 see the license plate number, or did you have to
12 open them to see it?

13 A. They had to be opened to be seen.

14 ATTORNEY KRATZ: I think, for this witness,
15 Judge, that's all I have. Thank you Mr. Brandes.

16 THE COURT: Mr. Strang.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY STRANG:

19 Q. Let's go back to, how about Exhibit 86, just for
20 old times sake, I guess. I'm going to show you
21 an aerial -- show you a aerial view of a property
22 Mr. Brandes.

23 A. All right.

24 Q. Now, yeah, I will take the laser printer -- or
25 pointer. Could we -- Well, do you recognize

1 Exhibit 86?

2 A. Yes.

3 Q. Aerial view of the Avery property, south is up?

4 A. Yes.

5 Q. Okay. And the area you are describing is
6 somewhere down here?

7 A. Yes.

8 Q. I'm probably blocking people, but at least I'm
9 not blocking you.

10 ATTORNEY KRATZ: Mr. Strang, do you want me
11 to zoom in at all?

12 ATTORNEY STRANG: I will.

13 Q. (By Attorney Strang)~ Can you see this?

14 A. Well, I have to look around you, but I can make
15 it out.

16 Q. Like my dad said, I would make a better door than
17 a window. How's that?

18 A. Sure.

19 Q. Okay. Now we both can see. So, that's the
20 little blue building that we saw in the two
21 photos you have, or in the first photo that you
22 have; does that seem right or is it actually down
23 like that?

24 A. I think the one you have, yeah, that's the
25 building.

1 Q. So that station wagon is somewhere right there?

2 A. Yes.

3 Q. Okay.

4 ATTORNEY STRANG: And why don't we zoom in
5 on that, if we can, Mr. Kratz.

6 Q. (By Attorney Strang)~ Is it possible to pick the
7 station wagon out from here or no?

8 A. I believe so. I believe it's next to.

9 Q. I will let you do that.

10 A. I think that's it right there.

11 Q. Okay.

12 A. Shaking it.

13 Q. Everybody does. And what we have got, running --

14 ATTORNEY STRANG: If we go back to -- let's
15 do 139 and then we'll go to 140, if you don't mind,
16 Mr. Kratz. These are the two you just had.

17 Q. What you have got there is a barbed wire fence --

18 A. Yes.

19 Q. -- is that right? And the fence is between the
20 road or the little gravel road. The photography
21 appears to be on the station wagon in which you
22 found the license plates.

23 A. Yes.

24 Q. And then 140 --

25 ATTORNEY STRANG: Any chance of 140 or are

1 you on strike? Thank you.

2 Q. (By Attorney Strang)~ We have got the barbed wire
3 fence, again?

4 A. Yes.

5 Q. So you actually, to get to the station wagon, you
6 would go in the entrance to the building, or the
7 business, I'm sorry.

8 A. Yeah, we would have gone around the building.

9 Q. And come around. You didn't come at this from
10 that roadway?

11 A. No.

12 Q. Okay. Have you ever seen a -- ever seen a men's
13 wallet called a tri-fold wallet?

14 A. Yes.

15 Q. Was that sort of how the license plates --

16 A. Exactly.

17 Q. -- were? And you were saying on direct that, you
18 know, probably as you looked at these license
19 plates, the most likely way to do that would be
20 to take your thumb and bend it over from one end
21 and then bend it over from the other again --

22 A. I guess.

23 Q. -- with your hands?

24 A. Yes.

25 Q. That's what it looked like to you?

1 A. Yeah.

2 Q. Okay. And maybe you don't remember the license
3 plate number, but so there's no mystery; did you
4 recall the license plate number being the one
5 that you were told was on Teresa Halbach's car?

6 A. I didn't have it written down. I had to ask the
7 State trooper. And she had it written in a book.
8 And when she looked, that's when I confirmed it
9 was it.

10 Q. Maybe Trooper Cindy Paine?

11 A. I believe that was her name.

12 Q. Okay.

13 ATTORNEY STRANG: That's all I have for
14 you.

15 THE COURT: Anything else, Mr. Kratz?

16 ATTORNEY KRATZ: No. We'll call Trooper
17 Cindy Paine next.

18 THE COURT: All right. The witness is
19 excused. Counsel, how much time are we anticipating
20 for the next witness?

21 ATTORNEY KRATZ: How much do I anticipate
22 or Mr. Strang? I will be five minutes, Judge.

23 THE COURT: I'm going to be asking each of
24 you.

25 ATTORNEY STRANG: I can't imagine I would

1 be any longer than I was.

2 THE COURT: All right. We'll take the
3 trooper.

4 THE CLERK: Please raise your right hand.

5 **TROOPER CINDY PAINE**, called as a witness
6 herein, having been first duly sworn, was
7 examined and testified as follows:

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

10 THE WITNESS: It's Cindy Paine, P-a-i-n-e.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY KRATZ:

13 Q. Ms Paine, how are you employed?

14 A. I'm with the Wisconsin State Patrol.

15 Q. And what do you do with the State Patrol?

16 A. I'm a trooper with the patrol.

17 Q. What do troopers do?

18 A. We're -- Generally do traffic and traffic
19 enforcement and we enforce the state laws of
20 Wisconsin, the traffic laws.

21 Q. Do you on occasion assist with and are you asked
22 sometimes to assist in other general criminal
23 investigative matters?

24 A. Yes, we are asked by other agencies to assist
25 with either perimeter searches, perimeter -- we

1 secure perimeter or we do searches.

2 Q. Trooper Paine, were you employed as a State
3 Trooper on the 8th of November, 2005?

4 A. Yes, I was.

5 Q. And on the 8th of November, were you asked to
6 participate and assist in some search efforts at
7 a property that you have come to know as the
8 Avery Salvage Yard?

9 A. Yes, I have.

10 Q. Could you describe what your duties were at that
11 Avery Salvage Yard that day.

12 A. We were divided into several groups. And each
13 individual group had an area to search. And I
14 remained with this group and I had searched the
15 area.

16 Q. Do you recall what your group was comprised of;
17 in other words, how many people were in your
18 little group?

19 A. I don't remember how many people, but I know
20 there were troopers, there were deputies, there
21 were firefighters, citizen volunteers. It wasn't
22 one particular group.

23 Q. What kind of searches were you doing?

24 A. We were searching -- We were looking for,
25 specifically, a license plate, jewelry and camera

1 equipment.

2 Q. Okay. A more directed, a more specific kind of
3 search; is that ...

4 A. Correct.

5 Q. All right. And in part of that search, do you
6 remember how many vehicles you, individually, or
7 your group searched?

8 A. I would guess around 20.

9 Q. Do you remember how many volunteers and law
10 enforcement officials were there to help in that
11 effort that day?

12 A. The whole day?

13 Q. That day.

14 A. I mean -- I mean, the whole --

15 Q. The whole search?

16 A. No, I don't.

17 Q. How many people were involved in the search
18 effort; do you remember?

19 A. I would guess over 90 troopers --

20 Q. Okay.

21 A. -- and inspectors.

22 Q. A lot of people?

23 A. A lot of people.

24 Q. Were there a lot of cars?

25 A. A lot of cars.

1 Q. All right. As part of this search, Trooper
2 Paine, do you recall a person in your group being
3 a gentleman by the name of William Brandes?

4 A. Yes, I do.

5 Q. At some time during that search, do you recall
6 being summoned by Mr. Brandes to a specific car?

7 A. Yes, I was.

8 Q. Tell the jury what you saw, please.

9 A. He had pointed out that he had found a license
10 plate and he said that it had -- it was the
11 license plate we were looking for and he had
12 pointed it out to me.

13 Q. Did you look at the license plates?

14 A. Yes, I did.

15 Q. We're going to have those marked, in fact, right
16 now. Mr. Wiegert has been kind enough to put on
17 a pair of gloves for us and we're going to have
18 these exhibits marked.

19 (Exhibit No. 141 marked for identification.)

20 Q. But while he's doing that, tell me what you saw.

21 A. I saw a license plate that had a bend in it and
22 it was in the back of a station wagon. You have
23 got the driver compartment and then where it
24 would be from the driver's seat back is where the
25 license plate was found.

1 Q. Did Mr. Brandes tell you what condition those
2 plates were in when he found them?

3 A. He told me that they were folded; he had to
4 unfold them to verify -- to see the plate number.

5 Q. Were you told and did you know, specifically, the
6 license plate number for Teresa Halbach's vehicle
7 that you were looking for?

8 A. Yes.

9 Q. And did the license plates that you saw match the
10 tag number or license plates of Teresa Halbach?

11 A. Yes.

12 Q. I'm just going to show you a photo; it's
13 Exhibit 141. Tell the jury what that is, please.

14 A. This is a photograph of the license plate the way
15 I saw it when it was pointed out to me.

16 Q. Who took that photo?

17 A. I did.

18 Q. Showing the jury, now, what's been identified by
19 you as No. 141; what are we looking at?

20 A. We're looking at the license plate as it sat in
21 the back part of that station wagon, in the
22 condition that Bill had left it at.

23 Q. Bill Brandes?

24 A. Yes.

25 Q. Who took this photo?

1 A. I did.

2 Q. And so do you know that to be what you saw that
3 day?

4 A. Yes.

5 Q. The license plate, SWH-582, is that depicted in
6 Exhibit No. 141?

7 A. Yes, it is.

8 Q. And, in fact, are those -- was that a match with
9 the license plates that you were told you were
10 looking for?

11 A. Yes.

12 Q. Mr. Wiegert is going to hand you and show you two
13 exhibit numbers now. I will bet they are 142 and
14 143.

15 DETECTIVE WIEGERT: I wouldn't touch
16 them, though.

17 ATTORNEY KRATZ: I'm wrong again.

18 THE CLERK: 152 and 153.

19 Q. (By Attorney Kratz)~ 152 and 153. I'll first
20 show you what is marked 152 and ask you to
21 identify that, if you can and tell the jury what
22 it is?

23 A. That would be the license plate that we were
24 looking for, the registration number.

25 Q. All right.

1 ATTORNEY KRATZ: Mr. Wiegert, could you
2 show us and show the jury, please.

3 Q. (By Attorney Kratz)~ Now, the differentiation
4 between these two, this 152, that actually has a
5 expiration tag on it; is that correct?

6 A. That is correct.

7 Q. That would usually be the back plate or the front
8 plate?

9 A. That would be the rear plate, yes.

10 Q. Show you No. 153 now, tell us what that is.

11 A. And that would also be the license plate for --
12 the license plates we were looking for.

13 Q. Would that be the front plate or the back plate?

14 A. That would be the front plate.

15 Q. And you are able to identify those and they look
16 the same or similar, other than being separated,
17 as they did on the 8th of November; is that
18 correct?

19 A. That is correct.

20 ATTORNEY KRATZ: Judge, we will move the
21 admission of the photos and the two license plates
22 at this time.

23 (Exhibits 139, 140, 141, 152 & 153.)

24 THE COURT: Any objection?

25 ATTORNEY STRANG: No objection.

1 THE COURT: Very well. The exhibits are
2 received.

3 ATTORNEY KRATZ: That's all I have. Thank
4 you.

5 THE COURT: Mr. Strang.

6 ATTORNEY STRANG: Ma'am, I don't mean to
7 make you feel left out, but I'm not going to ask you
8 any questions.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: All right. The witness is
11 excused. And I think with that witness, we're going
12 to adjourn for today.

13 Members of the jury, since you are
14 leaving for the weekend, I'm going to read the
15 usual admonishment to you, but in a little more
16 detail. As I have previously informed you, the
17 Court's decision not to sequester the jury in
18 this case is dependent on the jurors not
19 listening to, watching, or reading any news
20 accounts of the case, nor discussing it with
21 anyone including members of your family or other
22 jurors.

23 For these reasons, it is vital that you
24 do not listen to any conversation about this
25 case. Do not read any newspaper or internet

1 reports, or listen to any news reports on the
2 radio or television, about this case.

3 To assure that you are not exposed to
4 improper media coverage, the Court has ordered
5 that for the duration of the trial you do not
6 watch the local news on television. Do not
7 listen to the local news on radio. And do not
8 read the newspaper unless you first have someone
9 remove any articles about this case. In
10 addition, do not visit any internet websites or
11 web logs which may include any information about
12 the case.

13 The Court understands that some of you
14 may be working at places of employment during the
15 weekend; do not discuss the case with any
16 employers, employees, or patrons.

17 Do not volunteer your status as a juror
18 to anyone. If anyone attempts to discuss the
19 case with you, politely but firmly notify them
20 that you are prohibited from discussing this
21 case.

22 If you are involuntarily exposed to
23 information about the case from any source, take
24 steps to immediately avoid any further exposure.
25 Should you be exposed to any reports or

1 communications from any source concerning the
2 case during the trial, you should report that
3 fact to the jury bailiff.

4 With that, you are excused at this time
5 and we will see you Monday morning.

6 (Jury not present.)

7 THE COURT: Counsel, I would like you to
8 stop very briefly in chambers before leaving today.

9 ATTORNEY KRATZ: We'll do that.

10 THE COURT: Just a second, the Clerk has a
11 few questions.

12 THE CLERK: Clerk, I think this was --

13 ATTORNEY BUTING: This was not marked,
14 right?

15 THE CLERK: And I am --

16 THE COURT: All right. Just a minute, if
17 you're going to say this is not marked and we're on
18 the record, let's identify it.

19 ATTORNEY BUTING: This being DCI Report
20 No. 180, which was Special Agent Fassbender's report
21 that he refreshed his recollection on. It's not
22 been admitted -- or not offered as an exhibit. It
23 just got mixed in here.

24 THE COURT: So you -- you do not wish it --
25 not only do you not want it admitted, you do not

1 want it marked?

2 ATTORNEY BUTING: At this time, I don't see
3 any need to.

4 THE COURT: Any objection?

5 ATTORNEY KRATZ: No, it was just used to
6 refresh recollection, doesn't have to be an exhibit.

7 ATTORNEY BUTING: 145 was marked and not
8 able to be identified. I guess we leave that.

9 THE COURT: It will stay marked.

10 ATTORNEY BUTING: We'll see if another
11 witness identifies it or not.

12 THE CLERK: And my own question is, I know
13 Attorney Strang is making a copy of that CD for one
14 of the exhibits and the other exhibit, 127, I think
15 a copy of -- let me find that one -- it was a photo
16 of the aerial view of Avery Road and that I'm
17 waiting for.

18 ATTORNEY KRATZ: That you could not find
19 from the previous hearing and that's the one that
20 you wanted us to make another copy of.

21 THE CLERK: That's right.

22 ATTORNEY KRATZ: We promise to do that,
23 Judge.

24 THE CLERK: And then one the 148, 149, 151,
25 which were all photographs, am I getting copies of

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those too?

ATTORNEY KRATZ: Yes.

ATTORNEY STRANG: I burned a copy of the CD which is Exhibit 126. And then when I opened it to make sure that the computer duped it as it said, it had all of about three seconds on it. So I'm going to do that again this weekend. So that's why we don't have that yet.

THE COURT: All right. We're adjourned for today.

ATTORNEY KRATZ: Thank you.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 8th day of October, 2007.

Diane Tesheneck, RPR
Official Court Reporter

'	144 [8] 190/10 191/20 193/22	3
'05 [1] 29/2	193/23 209/25 210/3 210/3 210/17	30 [1] 123/24
-	145 [4] 3/4 195/14 195/16 245/7	31 [1] 19/14
--right [1] 152/24	146 [2] 201/1 202/23	3302 [1] 214/23
.	147 [4] 31/6 142/18 200/12 200/16	37 [1] 117/2
.22 [4] 187/11 187/16 187/17	148 [5] 3/5 214/9 214/10 214/11	381 [2] 1/5 4/3
203/22	245/24	395 [1] 93/24
0	149 [4] 3/5 214/16 214/17 245/24	3:00 [2] 153/7 154/8
041 [1] 214/2	15 [5] 72/6 72/10 77/3 77/22 88/25	3:04 [2] 153/21 153/23
05 [3] 1/5 4/2 151/1	15 miles [1] 223/11	3:25 [1] 156/12
051776 [1] 150/23	150 [5] 3/5 10/12 20/10 215/3	3:30 [2] 16/12 200/15
1	215/4	3:32 [1] 157/7
1,000 [1] 40/4	151 [4] 3/5 215/13 215/15 245/24	3:32 p.m [2] 157/6 157/8
10 [7] 9/3 9/7 104/8 159/21 183/7	152 [6] 3/6 240/18 240/19 240/20	3:35 [2] 156/11 156/12
223/23 224/7	241/4 241/23	3:48 p.m [1] 159/14
10-ish [1] 145/2	153 [5] 3/6 240/18 240/19 241/10	
100 feet [1] 108/2	241/23	4
102 [1] 176/11	1530 [1] 200/15	4,000 [4] 49/3 76/16 89/3 105/19
10:00 on [1] 30/9	16 [1] 1/8	40 [6] 90/20 115/18 115/25 162/17
10:00 p.m [1] 104/9	1735 [1] 201/7	164/22 200/23
10:00 people [1] 144/21	18 [2] 9/10 39/13	40 acres [2] 89/1 198/16
10:04 [1] 180/17	180 [2] 150/22 244/20	45 [1] 105/9
10:05 [1] 176/2	1810 [1] 201/11	47 [1] 178/12
10:41 [1] 145/12	19 [1] 186/2	48 [1] 85/5
10:41 p.m [1] 145/16	195 [1] 3/4	492 [1] 145/9
10th [1] 186/3	1989 [2] 5/16 58/10	4:00 [1] 78/23
11 [2] 72/5 152/14	1992 [1] 6/3	4:03 [1] 157/13
11/5 [1] 211/12	1993 [1] 6/4	4:16 p.m [1] 211/12
118 [3] 189/5 189/9 190/20	1996 [1] 218/24	4:17 [1] 157/15
11:40 [1] 183/8	19th [1] 40/7	
11:51 [1] 183/8	1:00 [2] 16/9 65/24	5
12 [3] 149/7 184/25 205/24	1:15 [1] 129/2	5-0 [1] 25/17
12/9/05 [1] 151/1	1st [9] 199/20 200/2 200/3 203/14	50 [5] 25/16 25/22 105/9 177/13
126 [1] 246/4	204/1 204/19 205/3 205/13 207/23	225/14
127 [1] 245/14	2	54 [5] 89/3 114/11 114/24 115/2
128 [4] 3/2 8/25 8/25 28/9	2,000 [1] 40/4	115/10
129 [3] 3/2 12/25 28/9	20 [2] 113/24 237/8	582 [1] 240/5
12932 [2] 82/25 101/10	200 [1] 10/10	5:35 p.m [1] 201/7
12:18 p.m [1] 181/7	2000 [1] 37/20	5th [33] 15/25 18/13 26/4 28/4
12:25 p.m [1] 179/2	2005 [15] 13/3 13/14 16/1 26/15	65/8 78/14 83/15 90/5 91/5 97/16
12:48 p.m [1] 179/3	27/25 28/4 30/6 30/10 36/24	101/5 104/15 132/4 144/23 144/24
12th [10] 127/20 127/21 131/23	37/10 60/16 65/8 150/25 223/12	145/17 145/18 146/20 159/14
131/23 132/4 184/11 184/15	236/3	165/8 166/7 175/25 176/24 179/17
184/21 186/6 203/15	2006 [3] 198/2 200/14 205/3	185/8 188/18 190/16 203/14 213/1
130 [5] 3/2 94/1 94/3 94/14 134/4	2007 [2] 1/8 247/15	213/18 213/21 214/21 215/18
131 [3] 97/9 97/11 97/15	208 [1] 2/12	
132 [2] 97/19 97/25	214 [1] 3/5	6
133 [3] 98/3 98/4 98/7	215 [1] 3/5	6,000 [3] 8/4 8/5 37/3
134 [5] 2/11 3/2 3/2 98/12 98/17	218 [1] 2/13	60 [4] 2/6 113/23 123/11 123/17
135 [2] 98/23 98/24	221 [1] 2/14	62 [1] 2/7
136 [4] 99/3 99/9 99/21 100/1	223 [1] 2/16	63 [1] 2/10
137 [4] 99/23 99/25 100/1 100/4	2241 [2] 145/6 145/10	6:10 [1] 201/10
138 [7] 3/2 99/24 100/6 100/7	23 [1] 179/6	6th [5] 104/19 104/23 107/17
100/11 100/15 134/4	230 [1] 2/17	112/8 179/3
139 [10] 3/3 100/13 100/14 226/3	235 [1] 2/20	
226/9 226/11 226/14 226/18	238 [1] 3/3	7
232/15 241/23	24 [1] 185/15	70 [2] 10/13 10/24
14 [1] 6/4	241 [6] 3/3 3/3 3/3 3/3 3/6 3/6	72 [1] 54/7
140 [7] 3/3 229/15 229/25 232/15	25 [2] 68/3 123/24	7:30 [1] 79/12
232/24 232/25 241/23	27 [1] 64/5	7:30 p.m [1] 175/24
141 [6] 3/3 238/19 239/13 239/19	28 [3] 2/5 3/2 3/2	7:30-ish [1] 96/12
240/6 241/23	28th [1] 198/9	7th [5] 113/18 117/8 118/16
142 [10] 3/4 3/4 142/4 142/6	2:00 [3] 92/22 133/22 147/25	180/11 181/10
144/16 157/1 209/16 209/22	2:00 p.m [4] 66/2 66/3 93/1 95/12	
209/24 240/13	2:20 [1] 95/17	8
143 [9] 190/9 192/18 194/20	2:25 [3] 95/17 145/25 152/12	80 [1] 10/24
209/16 209/22 209/25 210/17	2:25 I [1] 133/13	86 [16] 16/17 24/2 25/2 30/24
210/20 240/14	2:25 or [1] 157/11	55/6 57/6 82/19 90/21 101/12
	2:25 p.m [2] 141/23 143/2	107/11 124/13 149/19 188/20
	2:30 [2] 16/10 31/5	190/2 230/19 231/1
	2nd [8] 199/20 200/2 202/24 204/1	8:00 a.m [1] 178/14
	204/19 205/3 205/13 207/23	8:25 [1] 181/9

8	admission [1] 242/15 adult [1] 126/24 advance [1] 171/4 advanced [1] 16/24 advantage [2] 136/3 153/13 advise [1] 66/16 advised [3] 66/12 92/14 112/17 aerial [4] 230/21 230/21 231/3 245/16 affect [2] 22/20 91/18 affecting [1] 88/15 affidavit [1] 85/16 affiliate [1] 12/8 afraid [1] 176/8 after [48] 15/19 22/12 42/10 42/23 48/22 66/2 69/22 74/7 76/2 76/3 78/11 78/12 79/23 84/3 85/4 89/17 90/16 91/23 91/23 93/1 95/16 98/9 100/15 104/1 104/9 114/16 119/21 122/3 129/4 129/8 138/7 138/25 156/3 156/8 160/6 160/17 160/25 164/12 164/13 178/19 182/24 185/5 190/2 192/1 201/17 203/8 212/9 229/6 afternoon [10] 16/10 78/23 92/22 106/6 109/10 128/24 134/15 134/16 186/15 186/17 afterthought [2] 202/5 202/7 again [74] 13/6 18/13 19/4 19/5 19/6 34/7 54/21 56/16 70/8 77/1 80/6 94/16 95/7 97/20 97/23 98/15 98/25 100/2 100/8 102/4 103/18 105/2 107/11 113/21 113/23 114/7 115/22 116/3 117/16 119/6 119/21 120/12 120/17 120/24 123/23 128/15 129/3 131/5 133/21 149/19 149/21 151/11 160/11 164/19 165/4 167/7 169/7 172/12 174/8 174/8 179/6 180/13 182/11 183/6 184/10 184/15 186/2 188/19 189/25 191/20 193/1 200/2 201/23 202/15 202/24 210/21 215/16 223/24 224/5 228/2 233/3 233/21 240/17 246/7 against [9] 94/21 97/24 99/1 99/8 138/6 139/3 139/5 141/10 149/3 age [2] 37/18 38/10 agencies [8] 6/5 6/12 65/5 67/1 67/14 67/16 68/6 235/24 agency [4] 5/25 6/10 11/21 61/3 agent [33] 2/9 63/16 64/1 65/7 65/25 68/2 72/15 78/5 79/13 84/16 89/6 92/21 93/22 99/11 101/3 102/25 112/6 117/22 120/5 125/14 126/7 131/21 132/24 157/21 157/24 186/5 194/21 208/10 212/16 212/24 218/3 218/8 244/20 agents [12] 86/10 93/20 110/25 114/3 114/9 117/13 122/19 122/19 124/24 125/1 126/9 143/2 aggressive [1] 59/14 agitated [1] 24/19 ago [8] 9/17 28/21 38/9 38/11 54/19 80/19 98/14 191/21 agree [8] 66/21 116/25 134/22 141/12 185/15 186/10 192/3 192/14 agreeing [1] 208/24 agrees [1] 76/24 ahead [4] 19/16 61/25 81/18 108/8 aid [1] 52/2 alchemies [2] 46/12 46/22	alert [16] 21/1 23/10 24/13 35/21 35/24 36/15 43/1 50/24 52/9 52/19 55/1 56/4 56/16 60/21 131/7 161/10 alerted [13] 20/18 22/13 23/8 58/1 60/11 62/4 62/17 92/15 92/18 108/25 156/4 162/16 169/2 alerting [7] 11/15 20/1 20/7 20/9 46/6 49/15 51/8 alerts [8] 20/2 24/10 49/7 57/1 62/19 161/15 161/16 161/17 alibi [1] 170/25 alive [9] 15/7 51/19 55/3 72/14 72/18 74/16 87/22 160/12 170/1 Allen [1] 110/6 allocate [3] 68/12 87/2 173/5 allocation [2] 69/8 103/14 allow [9] 16/19 81/14 81/15 87/14 88/6 88/6 113/9 146/14 172/5 allowed [3] 25/5 53/17 208/14 almost [10] 15/9 64/5 94/3 107/14 170/19 185/9 191/3 194/11 202/4 212/20 alone [1] 215/23 along [25] 17/22 18/19 32/18 50/25 57/10 74/21 76/11 82/14 82/16 82/21 87/15 92/11 92/13 92/13 94/17 110/2 114/9 115/20 122/1 153/16 186/12 189/8 212/12 226/25 227/12 already [15] 62/16 76/8 112/25 120/7 136/17 140/13 147/2 153/1 154/13 155/24 163/23 168/15 209/6 209/10 219/23 alright [1] 193/9 alternate [1] 179/21 although [8] 26/22 43/10 44/5 78/24 99/6 127/22 128/21 138/24 aluminum [3] 195/8 195/21 196/2 always [9] 6/11 37/23 74/12 75/6 88/9 88/11 93/19 135/3 137/9 Alzheimer's [1] 60/19 American [2] 39/25 54/18 among [1] 12/18 amongst [2] 64/19 126/2 analysis [1] 119/23 analyze [1] 121/6 analyzed [2] 128/14 196/23 And that [1] 156/11 Andrew [1] 165/15 angles [1] 98/19 animal [3] 37/23 37/23 47/15 animals [2] 15/22 132/10 animated [1] 184/13 animation [2] 62/19 176/12 annual [1] 9/19 annually [1] 8/16 anonymous [2] 195/25 216/24 another [25] 25/14 26/21 44/11 44/12 45/22 49/22 55/7 57/9 58/4 65/25 96/15 120/15 147/12 167/25 168/1 168/13 168/14 169/2 184/1 187/21 214/18 216/23 229/14 245/10 245/20 answer [15] 20/22 59/16 76/7 81/15 108/21 108/23 115/13 167/4 167/6 167/14 167/16 210/9 213/7 216/11 222/1 answered [2] 142/1 220/8 answering [1] 216/9 anthropologist [3] 197/8 198/22 204/14 anthropologists [1] 84/14
9	90 [1] 237/19 904.04 [1] 171/21 970 [2] 215/25 216/1 9:30 [1] 184/21 9:47 a.m [1] 178/15 9:57 [1] 180/17 9th [8] 182/9 183/6 184/1 184/2 184/3 185/17 185/19 186/2	
A		
a.m [7] 178/14 178/15 180/17 180/17 181/6 196/2 203/2 abandoned [1] 110/2 ability [5] 7/4 13/7 22/20 75/16 247/14 absent [1] 174/21 absolutely [5] 103/5 155/15 202/8 208/7 217/23 acceptable [1] 38/5 access [2] 12/11 132/25 accidents [2] 48/15 48/17 accompanied [4] 10/11 76/17 96/21 218/7 accomplish [1] 191/12 accounts [1] 242/20 accurate [4] 60/14 61/16 176/14 198/10 acre [6] 90/20 115/19 115/25 162/17 164/22 200/23 acres [3] 89/1 89/2 198/16 across [2] 70/4 188/10 activities [2] 69/22 128/19 acts [4] 171/21 172/6 173/12 173/17 actual [3] 43/8 45/7 54/9 actually [42] 8/12 10/16 12/6 14/2 18/19 22/3 22/8 25/13 30/12 30/20 38/12 47/2 53/18 58/10 60/13 62/4 91/2 103/8 127/14 132/8 142/14 148/11 149/2 162/20 164/15 175/10 182/23 188/11 189/15 192/12 194/7 204/2 204/15 225/8 226/22 227/4 227/12 229/4 229/11 231/22 233/5 241/4 adaptable [1] 7/3 add [2] 76/7 89/3 addition [1] 243/10 additional [11] 27/19 71/12 106/2 106/6 108/12 126/15 127/24 128/1 139/2 172/5 205/7 address [6] 102/25 130/16 130/21 131/7 172/14 214/23 addressed [1] 130/25 adjacent [2] 119/8 124/8 adjourn [1] 242/12 adjourned [1] 246/9 adjusted [1] 163/3 administrator [1] 65/15 admission [4] 28/12 134/4 173/17 241/21 admissions [1] 28/9 admitted [5] 3/1 28/16 134/8 244/22 244/25		

A

anticipate [1] 234/21
anticipating [1] 234/19
anybody [7] 96/6 136/5 144/8
160/12 166/2 200/22 212/18
anyone [5] 74/23 199/16 242/21
243/18 243/18
anyone's [1] 164/22
anything [35] 10/19 20/11 73/7
93/6 104/15 110/16 111/5 112/6
112/21 113/5 115/8 116/4 116/6
119/3 122/5 122/16 125/20 128/19
129/7 129/16 138/23 157/25 159/5
159/9 160/14 164/7 174/23 196/24
198/21 207/5 221/2 224/16 225/7
227/23 234/15
anyway [3] 166/7 177/18 199/2
anywhere [4] 127/12 146/19
206/23 208/1
apartment [1] 88/21
apparent [2] 92/17 102/1
apparently [5] 100/9 114/14
129/23 190/25 191/22
appear [3] 98/9 142/16 197/6
appearance [10] 140/14 141/3
141/6 153/3 154/24 155/12 165/3
165/4 169/7 219/24
appearances [2] 1/11 4/5
appeared [4] 1/22 91/18 112/12
141/9
appearing [2] 4/9 201/2
appears [7] 4/7 25/20 129/20
143/4 157/5 192/12 232/21
Appleton [1] 136/15
applications [1] 158/20
applies [1] 143/16
appreciate [1] 214/14
appreciated [1] 35/9
approach [5] 22/1 29/6 63/4 82/18
137/17
approached [8] 19/10 19/11 22/16
26/2 31/13 59/7 92/16 174/20
approaching [2] 19/17 210/23
approximately [6] 10/24 16/9
16/11 123/11 153/7 201/19
area [108] 6/18 7/6 8/9 10/17
10/19 11/18 11/24 13/9 13/11
14/5 14/15 16/13 17/2 17/16
18/23 19/8 20/5 21/23 22/22
23/21 24/13 25/1 25/6 25/20
25/21 26/5 27/11 32/4 36/13
39/25 40/8 57/9 57/15 59/18
59/20 59/21 60/21 62/3 64/13
65/24 70/24 71/4 78/7 86/7 89/21
89/22 90/20 90/24 91/1 92/4 92/8
92/10 92/13 92/14 95/16 96/14
97/12 97/22 98/5 100/7 105/6
115/25 115/25 116/1 124/10
124/11 124/14 124/17 124/17
124/18 124/23 125/5 125/6 125/9
125/15 126/4 128/18 131/11
132/24 133/12 133/25 135/10
136/9 138/10 142/21 142/23 147/3
147/6 149/22 149/23 150/7 150/13
151/16 170/23 177/10 188/10
193/1 197/13 200/23 201/3 201/6
225/18 225/18 225/21 230/7 231/5
236/13 236/15
areas [16] 6/19 14/11 23/16 64/17
70/14 71/2 76/10 78/24 85/22
105/11 114/15 128/22 147/9 168/1
180/3 199/11

argue [1] 27/9
argument [1] 172/5
argumentative [2] 202/7 221/1
armed [1] 160/20
around [27] 23/22 32/19 57/9
78/22 86/13 90/19 93/6 94/20
105/6 111/2 141/18 144/21 145/2
155/22 160/11 182/20 194/9
194/25 199/20 224/15 225/9
225/22 227/4 231/14 233/8 233/9
237/8
arranged [1] 220/24
arrival [3] 66/10 95/11 143/5
arrive [3] 139/9 148/3 201/22
arrived [21] 16/10 30/20 78/22
83/10 83/14 95/13 95/15 133/21
140/13 141/23 147/13 147/25
148/6 149/15 152/14 153/1 155/9
155/22 181/23 201/7 201/10
arson [6] 125/2 125/2 125/4
125/11 197/5 197/11
art [1] 34/10
article [2] 15/12 50/11
articles [2] 100/9 243/9
aside [3] 32/22 49/9 130/19
asked [48] 5/8 5/12 10/8 16/1
16/22 17/7 17/16 17/22 18/20
19/3 19/6 19/25 21/18 21/25
23/16 56/1 58/5 59/6 60/9 62/16
65/16 66/13 84/17 96/13 102/3
108/22 112/10 123/6 124/20
124/23 125/23 156/6 166/25
201/15 209/14 209/15 210/4
212/25 216/4 216/15 218/4 219/18
220/7 223/13 228/17 235/21
235/24 236/5
asking [10] 27/11 43/7 72/20
77/12 111/4 141/21 166/17 171/16
208/21 234/23
asks [1] 18/6
assets [1] 70/12
assign [3] 69/9 70/17 216/6
assigned [9] 64/23 68/6 137/24
164/25 166/14 166/21 167/13
223/21 225/19
assigning [3] 68/11 103/2 166/10
assignment [2] 23/20 69/8
Assignments [2] 64/15 64/19
assist [21] 6/5 6/6 6/11 10/8 15/1
16/2 64/22 65/3 65/10 66/21
68/15 82/10 103/7 114/5 218/4
223/16 224/23 235/21 235/22
235/24 236/6
assistance [8] 23/15 58/15 65/16
67/13 68/17 111/11 125/11 135/21
assistant [6] 4/8 4/9 112/4 157/9
157/12 157/13
assisted [4] 67/10 67/12 67/16
247/10
assists [1] 65/6
associated [2] 110/10 126/25
assume [3] 130/22 148/25 220/2
assumes [1] 145/23
assuming [3] 42/24 146/5 164/19
assure [1] 243/3
attach [1] 68/24
attached [3] 57/4 69/7 122/15
attack [1] 74/7
attempt [1] 38/2
attempted [1] 127/3
attempts [3] 132/15 172/14 243/18
attending [1] 30/17
attention [2] 65/7 115/8

attorney [28] 1/17 1/19 2/4 2/5 2/6
2/7 2/10 2/11 2/12 2/13 2/14 2/16
2/17 2/20 4/7 4/8 4/9 64/8 112/4
112/5 138/18 138/20 157/8 157/9
157/13 208/18 212/24 245/13
Attorney's [2] 111/18 111/19
attorneys [4] 131/10 157/3 157/15
157/20
attribute [1] 20/24
audio [1] 193/17
August [1] 165/25
auspices [1] 64/8
Austin [1] 184/12
authority [4] 64/13 111/13 140/19
219/25
authorization [2] 109/5 111/23
Auto [3] 86/13 215/5 215/8
autopsy [1] 81/21
available [5] 7/23 12/22 44/17
70/8 135/21
avenue [1] 174/20
AVERY [80] 1/6 1/21 4/2 4/12 16/5
16/14 24/4 30/21 55/17 65/25
66/1 66/18 75/21 82/21 82/24
82/25 83/12 83/12 86/2 86/3 86/7
87/4 89/20 101/10 101/11 107/14
112/11 115/19 117/25 120/3 121/3
122/7 124/15 126/10 126/25 127/1
127/18 128/10 131/25 132/1 132/5
132/9 133/19 137/25 138/1 138/22
139/2 139/13 140/16 142/18
147/21 147/24 149/3 161/21 166/4
169/1 169/20 172/1 172/11 173/2
173/6 173/7 188/9 197/2 197/16
197/22 199/17 200/15 200/22
207/17 215/23 217/10 217/13
223/14 223/20 225/24 231/3 236/8
236/11 245/16
Avery's [74] 55/13 57/22 59/8
79/11 104/6 106/12 107/9 109/24
110/4 110/7 110/23 116/11 117/24
119/13 120/2 120/8 124/9 125/24
125/24 125/25 159/15 160/7
161/11 161/19 161/21 162/7
162/15 164/14 165/11 166/11
166/22 167/12 167/13 167/19
168/10 169/6 169/14 171/21
172/14 175/7 175/24 176/4 177/24
178/21 179/2 179/9 179/17 180/13
180/22 181/11 182/11 184/2 184/9
184/22 184/25 186/1 187/3 187/11
187/13 198/8 199/22 200/1 201/23
205/25 206/1 206/16 207/2 208/1
213/11 215/6 215/16 219/1 219/16
219/24
avoid [1] 243/24
aware [17] 12/2 24/22 26/2 40/6
40/12 44/18 96/8 116/6 130/11
138/1 161/15 173/23 187/25 195/7
195/24 196/4 200/6
away [11] 22/3 23/1 44/20 52/13
88/6 113/3 116/3 152/1 152/4
172/18 200/17
awkward [1] 72/20
axle [1] 116/14

B

B-r-a-n-d-e-s [1] 222/25
back [81] 19/2 19/4 19/17 19/22
19/24 19/25 20/4 20/20 22/3 24/2
25/11 25/13 30/23 31/6 34/19
39/23 57/24 70/3 73/24 78/15
81/24 81/25 82/9 84/25 91/2

B

back... [56] 92/19 96/23 101/12
104/11 104/24 105/4 105/5 106/5
106/22 109/9 109/10 112/10
120/25 125/23 127/15 127/17
134/17 150/25 155/16 156/2 156/8
157/19 162/20 174/10 178/22
179/1 179/15 179/17 180/12
182/11 183/7 183/24 185/4 188/18
192/19 200/22 204/8 207/6 209/22
213/14 217/13 225/23 226/6
227/16 227/18 228/25 229/6
229/19 229/20 230/19 232/14
238/22 238/24 239/21 241/7
241/13
backdoor [2] 207/3 207/10
backed [3] 96/25 100/24 101/1
background [2] 9/8 139/10
backseat [1] 49/16
backup [2] 18/5 20/14
backwards [1] 201/1
backyard [1] 197/19
bacteria [2] 41/15 41/16
bad [9] 7/11 22/17 58/5 73/5 73/9
91/9 92/2 149/13 203/9
Badly [1] 42/9
bag [2] 106/19 185/22
bailiff [1] 244/3
balance [2] 126/14 128/5
bandage [1] 52/3
bar [2] 63/7 77/11
Barb [5] 107/9 109/25 132/1
132/11 188/2
Barb's [1] 183/21
barbed [2] 232/17 233/2
barge [1] 61/3
bark [12] 11/8 14/25 17/12 19/3
19/8 21/5 33/12 33/14 34/6 34/8
34/14 34/19
barked [6] 11/8 19/5 19/24 21/17
32/6 57/16
barking [11] 20/8 20/25 24/21
25/9 25/19 33/25 34/2 49/15 57/8
58/4 92/20
barks [4] 11/12 17/12 34/12 34/18
barrel [7] 116/12 116/13 116/13
117/3 117/12 117/20 117/21
barrels [11] 57/15 57/24 62/3 62/4
62/17 107/22 107/22 108/25 109/1
126/22 129/21
bars [1] 77/7
base [2] 23/25 58/6
based [10] 85/13 136/22 141/15
158/15 163/3 166/16 167/7 169/17
172/2 175/9
basically [5] 69/11 74/18 80/4
128/17 204/11
bathroom [6] 24/13 56/4 56/6
56/12 161/11 162/15
Bay [4] 136/12 196/1 196/7 208/13
beagle [1] 50/8
bear [1] 29/8
became [4] 72/9 90/5 92/17 195/2
because [56] 7/14 10/18 12/20
13/20 20/5 22/24 23/5 35/16 36/6
36/20 37/2 37/12 38/25 40/3 40/9
44/5 47/11 47/14 51/5 52/15 54/7
71/3 73/6 80/14 81/13 82/8 82/9
83/18 88/15 91/17 93/12 99/7
105/1 106/24 118/8 119/15 121/1
121/23 125/6 132/23 155/4 159/3
160/2 169/15 172/19 181/20

182/15 193/4 197/1 197/17 209/14
219/2 220/22 222/1 228/18 228/21
become [3] 76/5 98/19 130/18
becoming [1] 46/2
bed [1] 110/22
bedding [3] 106/25 205/15 206/5
bedroom [9] 56/21 56/21 57/1
187/23 205/10 206/1 206/17
206/23 207/2
before [45] 1/9 14/14 16/18 37/19
48/3 58/10 61/16 73/22 77/5
79/13 79/20 84/25 87/8 87/21
88/1 95/8 99/9 106/1 112/9
125/22 129/8 137/19 137/24
140/13 142/1 144/11 145/24
147/13 147/16 147/19 155/4 156/4
158/25 162/21 165/23 169/19
176/12 184/21 186/6 204/19
205/14 206/9 211/18 222/16 244/8
began [2] 23/25 125/12
begin [4] 41/17 42/13 46/21 77/13
beginning [3] 134/17 162/25 200/4
begins [2] 15/14 41/11
begun [2] 133/23 147/14
behalf [7] 1/12 1/14 1/16 1/18
1/20 4/13 66/20
behave [1] 33/9
behavior [3] 34/2 37/22 37/24
behaviors [1] 33/18
behest [1] 165/22
behind [9] 20/20 24/25 25/6 57/12
59/7 107/23 124/8 227/17 227/18
behooves [2] 80/13 88/5
being [46] 33/9 50/24 54/8 65/18
68/6 72/22 86/19 86/21 87/4
87/10 89/20 89/23 95/8 101/6
113/25 118/6 120/2 120/3 121/9
123/4 136/23 136/24 148/5 153/13
160/1 169/20 173/9 184/3 188/8
189/10 189/12 197/1 202/12
208/14 208/19 211/8 213/10
215/18 220/21 222/5 229/7 234/4
238/2 238/6 241/16 244/19
beings [3] 29/16 48/18 49/11
belaboring [1] 185/25
Belgian [4] 7/8 9/3 9/4 59/3
believe [68] 17/4 25/18 27/15
65/15 76/13 85/14 105/4 108/22
110/20 113/23 114/8 114/18
119/11 120/3 125/16 125/22
126/18 129/25 131/1 132/1 132/11
133/17 133/24 138/8 138/24 139/4
139/8 142/21 147/22 149/9 150/2
150/7 152/15 155/19 155/20
156/11 156/12 156/13 158/2 159/4
173/25 174/16 178/6 183/20 186/5
190/17 193/24 196/10 196/25
198/10 200/3 200/25 201/25 206/3
206/6 208/18 210/3 212/16 213/8
214/24 219/3 219/4 219/5 223/19
229/16 232/8 232/8 234/11
believed [4] 60/12 60/18 122/10
219/6
believes [4] 17/11 172/7 172/9
174/7
bell [1] 183/9
belong [1] 50/12
belongings [1] 132/6
below [1] 99/18
bend [3] 233/20 233/21 238/21
benefit [1] 190/19
berm [4] 76/11 92/12 94/18
124/17

best [4] 75/16 91/22 204/6 247/13
bet [1] 240/13
better [4] 5/4 80/16 88/14 231/16
between [12] 10/24 24/18 30/9
34/11 121/15 130/20 132/4 135/25
150/13 194/10 232/19 241/4
beyond [4] 25/9 62/5 62/8 222/9
bias [2] 12/20 173/6
biased [1] 141/9
big [5] 19/8 73/12 89/13 152/22
196/8
bigger [3] 37/12 203/25 204/2
bill [4] 215/15 220/18 239/22
239/23
binoculars [2] 152/7 152/9
biochemical [1] 41/13
biochemically [1] 42/17
bit [25] 5/2 5/4 10/18 13/16 32/20
50/5 52/13 63/10 98/18 115/12
136/17 150/15 151/12 151/17
154/3 155/8 162/9 169/18 176/17
176/20 180/25 192/19 198/2 204/2
218/13
bits [2] 136/18 169/11
blade [2] 163/17 186/4
bled [1] 42/23
bleed [2] 48/18 48/20
bleeding [1] 52/1
blind [1] 36/7
blocking [2] 231/8 231/9
blood [39] 10/6 20/13 40/22 41/2
41/21 42/9 42/13 43/1 48/24
52/25 53/13 54/10 56/13 112/12
112/15 112/16 113/13 120/23
121/6 121/22 126/2 126/4 126/5
177/5 179/25 199/10 199/16
205/11 205/12 205/25 206/4
206/13 206/17 206/25 207/7
207/14 207/16 207/20 207/21
bloodhound [4] 15/5 15/11 50/7
53/25
bloodhounds [3] 6/17 7/3 90/14
bloodstains [1] 179/23
bloody [1] 206/9
bludgeon [1] 164/6
bludgeoning [1] 82/3
blue [11] 18/25 31/15 31/17 57/20
58/7 122/14 192/4 192/7 192/10
227/5 231/20
board [1] 82/19
boats [1] 14/23
Bob [3] 18/4 29/17 32/22
Bobby [3] 187/23 221/20 222/2
bodies [2] 7/15 125/8
bodily [5] 40/25 41/5 51/15 51/19
56/7
body [17] 15/2 15/14 15/16 41/15
51/19 72/22 78/8 80/11 81/20
105/14 115/5 196/1 197/1 197/15
197/17 198/20 207/1
bone [7] 35/7 40/20 40/22 54/22
124/12 197/9 197/12
bones [2] 124/19 197/18
book [1] 234/7
books [1] 121/15
border [1] 223/10
boss [1] 219/22
both [18] 8/21 9/5 10/22 13/9
13/12 60/16 67/20 69/1 84/2
89/19 132/13 157/15 176/7 205/9
219/15 219/21 220/5 231/19
Bothered [1] 61/1
bottom [3] 17/1 137/20 145/4

B
Bowe [2] 89/6 107/3
box [1] 97/13
boy [1] 217/12
boyfriend [3] 170/13 170/13 174/19
branch [4] 1/1 64/9 100/3 247/5
branches [2] 97/12 194/7
BRANDES [12] 2/15 222/14 222/19 222/24 223/3 223/12 230/15 230/22 238/3 238/6 239/1 239/23
brass [1] 140/2
break [12] 34/24 35/4 76/3 76/23 77/1 77/2 77/13 128/24 129/1 129/24 186/15 186/17
breakdown [1] 41/18
breaking [2] 46/9 77/5
breed [2] 6/24 7/2
breeds [3] 6/23 7/5 58/25
breeze [1] 23/5
brief [3] 77/7 77/11 164/13
briefed [2] 69/19 153/2
briefing [5] 69/18 78/16 139/15 156/4 178/19
briefly [10] 29/6 63/5 88/2 88/3 90/7 128/6 159/13 184/16 186/3 244/8
Brillion [5] 67/7 223/6 223/7 223/9 224/1
bring [7] 16/23 75/12 75/13 84/25 93/20 174/10 204/8
bringing [1] 131/22
broad [2] 82/12 120/6
broke [1] 162/19
broken [1] 64/16
brother [1] 161/21
brought [15] 42/21 54/6 73/24 76/9 76/14 87/10 89/16 89/17 90/8 90/15 90/17 105/8 114/4 115/8 182/23
Brown [1] 67/9
brush [3] 18/25 106/25 187/4
Brutus [89] 8/3 9/1 9/3 9/7 9/9 9/10 9/18 9/21 9/23 10/7 10/10 10/22 11/3 11/6 11/7 11/22 12/1 12/18 14/3 16/20 16/25 17/11 17/15 18/4 18/10 18/22 18/23 19/16 19/19 20/12 20/18 20/24 21/10 22/9 22/12 22/12 23/8 23/15 24/9 24/10 24/14 24/17 24/22 25/5 26/4 26/9 26/19 26/25 27/22 28/4 29/19 31/13 31/24 32/24 32/24 33/2 33/8 34/14 35/12 37/7 37/15 37/20 38/9 42/21 49/7 49/15 49/25 51/3 51/8 52/9 55/22 56/19 57/3 60/11 60/11 60/20 61/13 62/3 90/16 92/3 92/3 92/7 92/9 92/13 92/15 92/16 92/17 156/3 161/10
Brutus' [6] 13/2 22/20 26/15 36/25 37/1 92/14
building [14] 14/9 24/7 24/11 24/12 37/23 57/13 80/22 105/7 159/22 227/5 231/20 231/25 233/6 233/8
buildings [22] 13/12 24/1 74/19 74/21 75/24 76/12 78/18 79/4 88/25 88/25 105/7 109/20 120/4 125/8 127/16 159/25 162/11 168/1 168/20 187/8 187/9 195/3
bullet [5] 198/24 199/20 203/5 203/25 204/3

bullets [4] 199/21 199/21 199/21 204/9
bunch [3] 211/24 227/13 229/10
Bureau [4] 64/16 64/19 217/5 217/8
bureaus [1] 64/17
burial [5] 39/25 40/8 121/2 188/6 188/13
burn [20] 57/15 57/24 62/3 107/22 107/22 116/12 116/13 116/13 117/3 117/20 117/21 124/10 124/11 124/14 125/6 125/15 129/21 197/13 197/14 197/17
burned [5] 25/20 26/10 125/8 209/8 246/3
burning [1] 117/12
burns [1] 125/7
burnt [2] 196/2 197/1
business [10] 44/19 45/24 75/24 85/6 110/11 110/22 128/10 132/16 169/8 233/7
businesses [2] 111/3 132/19
busy [3] 121/1 168/4 195/4
BUTING [33] 1/19 2/11 2/13 4/12 134/11 144/17 171/17 172/7 172/8 172/20 172/23 174/12 186/21 202/20 205/19 208/11 208/13 208/14 208/21 208/25 209/2 209/13 209/15 210/4 210/18 211/18 211/23 212/3 212/7 212/9 212/25 216/4 218/12
Buting's [2] 172/3 211/7
bypassed [1] 146/25

C
C-r-a-m-e-r [1] 4/25
cadaver [15] 5/21 6/20 10/11 13/3 22/5 34/3 37/12 43/10 43/18 46/4 52/12 53/12 54/1 90/13 161/2
calculated [2] 37/7 38/14
called [24] 4/19 12/10 20/17 25/10 39/11 43/4 44/13 60/17 63/16 69/13 78/21 90/13 93/14 109/6 122/6 125/14 136/8 136/19 158/9 171/20 220/24 222/19 233/13 235/5
calls [3] 4/1 6/9 208/12
Calumet [36] 4/7 65/14 66/11 66/13 67/3 67/7 67/20 69/14 89/17 94/7 95/4 96/17 102/21 111/18 114/3 114/3 117/17 126/21 130/1 140/5 140/10 140/18 140/20 153/7 153/25 155/17 157/14 175/21 178/7 182/10 196/12 208/16 212/23 218/7 223/10 223/11
camera [2] 192/6 236/25
canal [2] 60/19 61/4
canine [5] 5/10 12/4 30/18 90/9 90/12
canines [1] 35/17
canopy [1] 191/11
cannassers [1] 70/2
cannasses [4] 73/25 111/1 111/2 128/15
capable [2] 89/14 168/16
capacity [8] 39/9 58/11 67/10 67/11 68/16 68/17 73/3 223/16
car [40] 16/15 17/3 17/5 17/13 17/14 18/17 31/11 31/13 31/14 31/18 31/19 31/22 31/23 48/15 48/17 48/22 48/25 49/16 49/16 76/10 91/19 92/7 96/15 96/24

110/23 114/19 114/24 122/14 122/17 127/9 133/12 142/21 147/6 147/8 152/22 183/14 192/14 228/25 234/5 238/6
carcass [3] 43/24 44/2 44/8
cardboard [3] 94/19 97/13 97/24
care [2] 23/2 79/1
careful [1] 18/12
carefully [2] 137/19 247/8
cargo [1] 32/4
carpet [4] 42/23 42/25 106/20 106/25
carry [2] 96/18 207/1
cars [25] 17/17 18/19 18/21 31/17 48/8 48/10 49/3 49/7 76/11 89/3 89/4 90/25 92/13 114/12 114/13 114/14 114/15 114/18 114/24 115/21 162/12 187/9 191/8 237/24 237/25
case [87] 1/5 4/2 8/1 8/4 8/6 11/1 11/10 13/5 14/14 18/7 18/16 21/25 26/13 26/19 26/21 28/25 29/1 38/13 60/17 61/12 65/4 68/7 69/12 71/18 71/19 72/2 72/16 72/17 73/15 74/9 74/14 75/19 77/2 78/9 80/4 81/2 81/3 82/2 85/9 88/19 88/22 90/2 93/13 103/2 129/3 131/2 136/8 136/16 136/16 136/19 137/8 137/25 141/7 148/25 149/5 150/23 151/10 154/11 154/14 154/21 158/12 163/15 163/19 166/13 166/20 171/20 172/10 175/2 175/3 206/20 209/8 209/12 215/23 217/20 217/22 223/8 242/18 242/20 242/25 243/2 243/9 243/12 243/15 243/19 243/21 243/23 244/2
cases [8] 10/7 10/10 10/13 10/24 14/25 20/11 21/12 81/4
casings [1] 204/4
casings [2] 198/12 203/24
castoff [1] 206/13
cause [5] 48/17 85/13 154/10 154/20 164/1
CD [2] 245/13 246/3
Cedar [2] 29/25 30/11
ceilings [1] 206/18
cells [1] 54/3
cemetery [1] 40/8
center [7] 30/14 78/16 89/7 89/8 104/12 156/5 195/5
century [1] 40/7
certain [8] 76/10 135/25 135/25 148/11 165/1 170/8 224/18 224/20
certainly [26] 70/15 71/10 79/19 81/6 87/24 98/22 99/20 113/4 113/17 130/9 135/9 135/21 136/2 143/9 149/16 151/4 163/2 168/20 174/17 177/7 198/17 201/21 211/1 212/20 214/5 220/22
certification [7] 7/16 8/10 8/11 9/18 13/6 26/18 38/7
certifications [1] 8/23
certified [9] 9/5 9/13 9/16 12/5 14/9 27/4 27/11 27/17 27/22
certify [2] 12/7 247/6
CF [2] 1/5 4/2
chain [4] 24/23 26/3 129/23 130/24
chained [1] 59/20
challenges [1] 47/7
challenging [2] 47/23 49/4
chambers [1] 244/8

C

chance [5] 57/3 62/8 73/8 144/11 232/25
change [3] 72/19 73/22 74/3
changed [1] 141/19
changes [1] 15/15
charge [2] 66/6 216/21
charged [1] 216/20
Charles [6] 110/7 120/2 125/24 125/24 132/1 132/3
check [11] 16/15 17/13 23/16 23/25 26/5 31/6 74/12 75/11 75/18 147/9 196/9
checked [4] 18/17 23/23 23/23 147/5
checking [1] 200/7
checkpoint [9] 143/23 144/2 144/3 145/16 146/25 147/1 147/3 147/9 149/22
chemical [4] 15/15 44/16 44/21 126/1
chemicals [1] 126/3
chemist [1] 46/16
chemist's [1] 46/22
chemists [1] 46/11
chief [1] 88/10
choice [1] 173/2
Chuck [4] 161/18 161/21 162/7 169/1
CINDY [5] 2/19 234/10 234/17 235/5 235/10
CIRCUIT [3] 1/1 1/10 247/5
circumstances [5] 35/3 174/21 208/11 216/15 216/17
Cities [1] 136/9
citizen [5] 67/24 93/2 129/15 130/12 236/21
citizens [3] 88/7 133/1 217/25
City [1] 106/3
civil [9] 165/11 166/13 166/20 167/10 167/12 168/22 217/17 218/16 219/13
civilian [3] 6/7 6/8 145/11
civilians [2] 6/6 6/11
clandestine [1] 188/12
clarify [1] 162/22
clean [1] 48/23
cleaned [1] 207/4
cleaner [5] 106/19 106/20 106/20 106/24 106/25
cleaning [1] 42/25
clear [15] 6/19 16/13 17/7 17/8 17/22 18/20 20/15 77/17 111/11 134/25 153/12 156/17 187/1 188/14 222/6
cleared [1] 60/24
clearing [1] 19/18
Clerk [2] 244/10 244/12
close [2] 21/15 69/6
closed [2] 95/25 114/15
closely [1] 44/24
closer [5] 5/3 23/4 151/2 151/23 192/12
closest [4] 147/8 147/9 161/24 161/25
clothing [5] 15/12 50/11 50/16 115/6 225/8
clumps [1] 206/22
co [2] 155/25 158/3
co-leader [2] 155/25 158/3
cocktail [1] 47/20
coincidental [1] 155/21

Colborn [23] 129/17 145/7 148/16 165/14 165/15 165/18 166/21 167/10 168/24 169/5 175/18 178/3 179/1 180/12 181/2 182/10 183/7 216/5 216/22 217/3 217/5 217/10 218/23
Colborn's [2] 217/16 217/21
collapsed [1] 14/3
collar [1] 149/8
collect [4] 121/6 164/16 180/4 180/7
collecting [2] 148/23 164/16
collection [10] 44/25 70/22 71/13 79/6 84/3 117/15 120/16 127/6 148/18 148/19
colored [1] 192/7
combination [1] 161/3
comes [6] 15/13 41/9 133/10 143/10 143/14 180/25
comfortable [1] 230/5
coming [16] 19/19 22/25 41/20 41/24 73/4 88/8 96/13 99/4 120/19 135/10 136/3 144/4 189/18 200/21 200/22 223/3
command [12] 78/15 89/7 89/8 89/18 95/15 104/12 139/12 139/16 141/24 153/2 156/5 195/4
comment [1] 217/11
commented [1] 28/21
comments [1] 173/11
commercially [1] 44/17
commission [1] 129/15
commissioned [1] 138/18
commitment [1] 8/8
common [5] 47/2 65/4 83/21 84/4 149/19
commonly [4] 47/2 69/17 126/25 128/18
communications [1] 244/1
community [2] 138/10 223/4
comparison [1] 204/3
compartment [1] 238/23
compass [2] 30/12 30/18
complaints [3] 129/15 129/16 130/13
complete [5] 91/3 121/9 121/16 122/3 137/15
completed [4] 69/23 78/12 78/13 128/3
completely [4] 46/2 189/14 191/4 192/2
complexity [1] 64/24
complied [2] 129/18 131/1
comply [1] 130/4
compound [1] 44/16
compounds [1] 126/2
comprised [1] 236/16
computer [11] 119/14 119/16 121/7 180/14 180/15 184/13 213/11 214/18 215/16 246/5 247/10
computer-assisted [1] 247/10
computerized [1] 247/9
computers [1] 89/15
conceal [2] 91/19 100/10
concealing [1] 194/4
conceivably [3] 40/4 41/6 54/15
concept [2] 123/19 159/10
concern [9] 37/12 74/21 74/23 74/24 154/10 154/20 155/11 165/6 182/18
concerned [6] 59/12 60/25 104/25 141/13 189/2 194/2

concerning [1] 244/1
concerns [1] 91/2
conclude [1] 119/7
concluded [1] 246/12
concrete [1] 207/11
condition [4] 22/20 94/4 239/1 239/22
conditions [1] 96/3
conduct [3] 81/22 121/8 218/24
conducted [4] 65/18 86/19 86/21 188/8
conference [1] 30/16
confidence [2] 20/23 20/25
confident [1] 21/14
confirmed [2] 228/23 234/8
conflict [11] 140/14 140/15 153/3 154/13 154/16 154/24 165/3 165/5 216/18 219/23 219/24
confronted [1] 34/14
confused [1] 190/1
connected [2] 42/2 214/25
connection [3] 217/16 217/16 219/9
considered [2] 36/15 172/9
considering [1] 149/1
consist [1] 128/10
consistently [1] 132/14
contact [3] 59/9 91/10 118/19
contacted [1] 65/15
contacts [2] 68/18 132/9
contained [1] 196/6
containers [1] 105/12
contains [1] 227/1
contamination [3] 8/18 13/11 14/12
CONTD [3] 78/3 131/19 186/24
contemplated [1] 68/14
contents [1] 117/11
continuation [1] 4/3
continue [2] 115/11 128/8
continued [3] 104/7 104/8 128/8
continuously [1] 95/13
contraption [1] 191/4
control [11] 43/15 117/10 117/13 126/10 145/9 154/12 154/22 157/22 157/24 212/21 229/2
conversation [1] 242/24
convicted [1] 216/21
conviction [2] 138/3 138/22
coordinate [1] 111/8
copies [1] 245/25
copy [7] 77/9 77/17 213/24 245/13 245/15 245/20 246/3
corn [1] 61/4
corner [9] 17/1 24/4 55/10 92/10 99/5 101/13 101/15 149/24 189/24
coroner [3] 43/6 75/13 133/10
coroner's [2] 45/11 45/19
corpse [11] 43/12 43/18 44/14 44/20 44/23 46/4 52/18 52/19 52/21 79/22 80/20
corpses [2] 52/16 52/17
correct [115] 11/25 13/9 14/24 26/7 33/19 36/7 36/8 36/11 36/12 36/17 38/20 39/3 39/11 39/18 40/18 40/25 41/3 41/8 41/11 41/12 41/23 42/18 43/20 44/3 44/4 44/10 44/15 44/21 44/22 45/3 45/8 45/9 46/5 47/5 47/10 47/11 47/13 47/22 49/12 50/9 50/10 50/16 50/20 51/7 51/11 51/24 52/5 53/20 54/20 54/24 54/25 55/4 59/1 78/9 78/10 104/5

C

correct... [59] 122/12 127/25 135/4 136/10 140/11 140/17 143/15 144/9 145/17 146/22 147/11 148/7 148/24 153/5 153/15 153/19 155/6 158/11 158/24 160/24 161/20 162/18 163/18 164/8 166/8 166/16 167/5 169/22 175/11 176/3 176/13 176/24 177/9 178/5 179/7 179/12 180/6 181/16 181/22 188/16 194/8 199/15 206/6 206/24 207/22 209/4 214/19 214/20 218/18 219/3 219/14 220/20 221/22 237/4 241/5 241/6 241/18 241/19 247/12
correctly [3] 10/25 39/1 55/5
corresponds [1] 214/3
corruption [1] 149/7
cost [1] 74/13
could [89] 5/1 14/2 21/15 25/4 43/4 45/23 50/8 51/9 51/12 51/15 51/18 51/22 52/1 52/2 54/22 54/23 54/23 59/6 59/18 59/21 59/22 60/5 60/22 61/24 65/12 66/8 66/24 67/25 68/13 74/24 75/18 82/18 84/12 84/13 84/14 86/15 95/18 96/18 104/21 126/13 127/12 128/6 133/6 136/2 137/7 137/15 138/23 140/23 144/15 149/18 149/21 150/4 159/6 159/7 160/19 161/7 162/2 162/7 164/1 164/6 164/15 167/19 168/16 169/5 174/4 182/22 188/12 188/20 190/6 193/24 195/12 199/5 199/7 200/12 207/9 208/22 209/7 213/24 219/21 220/18 225/10 225/11 226/19 227/22 230/10 230/25 236/10 241/1 245/18
couldn't [11] 25/9 27/14 46/21 59/21 59/24 61/18 193/14 210/22 212/7 225/5 228/22
counsel [16] 81/8 115/12 129/6 130/22 146/11 149/18 154/19 162/6 171/2 193/20 194/19 202/9 214/4 214/15 234/19 244/7
counsel's [2] 77/14 222/7
count [2] 184/25 186/9
counted [1] 120/5
counties [3] 65/1 71/10 86/14
counting [1] 186/12
country [2] 7/21 43/17
county [58] 1/1 4/7 30/1 30/2 30/11 30/15 65/14 66/12 66/13 66/14 67/3 67/4 67/7 67/8 67/9 67/20 67/21 68/9 68/17 69/14 83/5 86/6 86/11 86/14 89/12 89/17 94/7 95/5 96/17 102/21 102/23 103/3 107/6 111/18 114/2 114/3 114/3 117/17 119/6 126/21 138/7 139/3 139/5 139/8 140/4 140/15 141/11 153/4 153/25 157/8 157/14 201/11 212/23 218/4 218/7 219/25 223/11 247/2
County's [1] 208/16
couple [9] 115/13 129/11 146/23 148/13 173/11 178/20 187/1 187/4 203/5
coupled [3] 113/24 115/22 123/23
course [6] 67/3 130/16 136/15 140/22 164/24 195/1
court [29] 1/1 1/10 1/25 4/1 27/14 76/24 77/12 84/25 85/7 128/23 130/19 131/8 131/12 146/10

158/21 171/8 171/19 172/4 172/16 172/22 173/11 173/14 173/23 215/10 243/4 243/13 247/4 247/5 247/19
Court's [2] 172/19 242/17
courtroom [2] 42/22 176/8
cover [2] 19/23 191/10
coverage [1] 243/4
covered [4] 105/2 191/4 192/23 193/5
covering [1] 194/4
covers [1] 36/13
crack [1] 204/5
CRAMER [16] 2/3 4/17 4/19 4/24 5/1 5/4 16/16 17/24 20/23 23/7 24/14 24/25 25/15 28/19 61/21 92/4
Cramer's [1] 77/9
cranial [1] 204/16
crawled [1] 227/14
created [2] 133/5 133/7
credentials [2] 7/18 12/15
credibility [1] 10/17
cremated [7] 26/14 26/16 26/20 26/23 27/23 27/25 28/5
crematorium [1] 40/15
crime [46] 70/25 78/20 84/11 91/10 93/14 93/18 93/20 94/9 94/23 94/24 95/1 95/5 95/13 95/25 96/1 96/6 96/20 104/16 106/5 109/8 112/9 112/21 118/13 118/17 118/19 118/25 119/22 120/23 122/21 124/22 125/10 125/22 126/18 127/22 133/7 149/8 168/3 168/11 179/16 182/5 183/4 188/5 196/22 197/3 197/16 199/10
criminal [5] 64/2 64/11 65/9 72/23 235/22
cross [12] 2/5 2/11 2/17 28/17 53/9 81/11 130/25 134/13 173/1 186/22 186/24 230/17
cross-examination [10] 2/5 2/11 2/17 28/17 130/25 134/13 173/1 186/22 186/24 230/17
crowbar [1] 82/5
crushed [7] 17/17 89/4 114/12 114/13 114/24 115/10 115/21
crusher [31] 16/15 17/3 17/5 17/13 17/14 18/17 31/1 76/10 92/7 95/17 96/15 96/24 114/11 114/19 114/25 133/12 142/21 147/6 147/8 150/9 150/10 150/12 150/14 150/14 151/14 151/15 151/19 151/20 151/22 151/25 192/14
Cummings [1] 153/24
currently [2] 5/19 64/15
cursor [1] 211/11
custody [4] 129/22 129/23 129/25 130/24
cut [2] 42/8 206/23
cuts [1] 22/22
cutting [2] 51/25 114/23

D

dad [1] 231/16
daily [2] 8/7 118/24
dark [5] 24/20 25/19 91/23 91/23 94/3
darkened [2] 25/1 124/16
darkness [3] 22/16 91/2 98/9
Dassey [1] 222/2
Dassey's [1] 187/23

date [8] 1/8 85/2 143/13 151/1 205/14 211/12 211/15 220/18
dated [2] 200/14 247/15
dates [1] 205/4
day [71] 1/4 23/6 42/20 42/20 42/21 42/22 65/10 66/2 69/6 69/6 69/24 72/7 73/18 74/5 87/25 90/4 104/14 104/18 104/19 105/8 106/10 107/5 107/7 108/4 108/4 109/20 113/10 113/24 114/4 114/7 115/15 118/6 118/20 118/23 119/17 119/19 119/24 121/4 123/4 123/11 123/14 123/17 124/5 124/22 125/12 125/17 125/20 127/8 127/16 127/23 144/20 165/8 168/13 168/14 173/4 177/23 178/18 180/10 180/25 182/24 182/24 190/4 202/19 224/12 225/12 236/11 237/11 237/12 237/13 240/3 247/15
days [13] 22/8 60/23 72/5 82/8 85/1 90/1 118/8 126/7 126/17 131/22 170/19 174/25 185/18
DCI [26] 64/12 64/14 64/16 64/16 64/22 65/3 65/4 65/5 65/6 65/15 65/16 67/4 86/10 114/3 114/9 117/13 122/19 124/24 130/1 135/1 135/5 138/16 143/2 150/22 218/7 244/19
dead [5] 15/21 15/22 51/20 54/3 55/3
deal [2] 125/7 149/6
dealerships [2] 67/23 68/20
dealing [6] 80/24 86/4 86/5 86/9 86/12 132/13
deals [1] 171/6
DEAN [2] 1/17 4/13
death [9] 64/20 74/11 75/10 79/19 80/20 82/3 82/4 88/4 93/19
debriefed [1] 104/12
debriefing [4] 69/24 106/12 112/18 139/15
debris [6] 91/18 94/19 97/15 98/16 98/25 100/9
deceased [4] 13/24 15/20 79/22 80/24
decide [1] 70/6
decided [5] 49/11 49/21 68/15 91/11 175/6
decision [10] 69/9 69/11 70/16 79/3 134/1 155/1 155/3 155/18 155/20 242/17
decisions [9] 69/10 69/21 72/15 72/16 72/17 72/21 141/15 141/18 174/2
deck [1] 207/7
decompose [2] 15/14 42/14
decomposes [1] 47/16
decomposing [8] 40/18 41/2 43/1 44/8 44/9 44/25 47/1 47/21
decomposition [2] 41/10 46/8
defendant [5] 1/7 1/18 1/20 1/21 83/12
defense [13] 77/8 77/17 81/8 130/7 131/3 171/15 171/23 171/24 172/8 172/21 173/20 212/24 214/3
definite [1] 165/5
definitely [9] 21/8 21/9 22/22 70/18 80/10 87/18 87/18 119/2 140/6
definitive [2] 34/8 60/21
degree [6] 96/11 113/17 121/19 162/5 195/4 195/6

D	140/12 156/5 determine [4] 117/9 75/17 79/21 127/13 determined [8] 11/1 34/8 106/21 138/23 154/13 154/23 178/19 197/6 determining [2] 126/4 169/12 develop [1] 158/6 developed [2] 39/16 83/19 diagonal [1] 55/10 diagrams [1] 184/13 Diane [3] 1/24 247/4 247/19 died [1] 54/18 dies [1] 15/14 difference [1] 15/7 differences [2] 44/7 73/1 different [33] 6/14 6/14 6/21 6/23 6/25 8/17 11/20 15/4 15/24 64/17 68/25 70/12 72/9 72/12 72/17 72/21 73/4 74/15 75/9 78/24 80/5 81/2 98/19 101/22 101/24 121/17 135/11 144/4 161/4 177/25 180/1 190/4 227/21 differentiation [1] 241/3 differently [2] 15/6 15/9 difficult [2] 38/21 89/3 digest [1] 70/5 digital [1] 211/11 direct [25] 2/4 2/10 2/16 2/20 5/5 55/8 63/23 65/7 78/3 87/2 113/14 117/10 118/25 122/16 131/17 131/19 152/17 159/4 163/8 199/9 216/18 222/7 223/1 233/17 235/11 directed [6] 76/5 119/13 119/23 123/6 130/9 237/2 directing [6] 73/15 83/11 84/22 85/19 85/22 121/13 direction [8] 25/14 87/19 87/20 94/17 108/1 111/12 121/8 226/23 directly [5] 107/14 122/20 124/8 171/7 172/15 dirt [1] 124/18 disadvantage [1] 135/15 disagree [4] 154/7 178/16 179/4 185/1 disagreement [1] 131/11 disasters [1] 14/6 discovered [12] 117/8 124/11 124/19 129/24 153/6 161/25 181/12 181/18 183/16 196/13 196/15 203/6 discoveries [2] 123/5 125/19 discovery [8] 124/4 129/13 130/2 130/4 131/2 181/21 208/12 214/3 discuss [6] 77/1 88/2 129/3 131/10 243/15 243/18 discussing [2] 242/20 243/20 discussions [3] 66/4 66/8 158/6 dispatchers [1] 114/5 disprove [1] 73/9 disputing [1] 154/2 distance [5] 19/20 22/23 152/3 152/4 152/8 distinction [1] 75/7 distinguish [2] 88/19 88/22 district [12] 4/7 4/9 111/17 111/18 112/4 112/4 157/3 157/8 157/9 157/13 157/15 157/20 disturb [1] 93/5 dive [5] 15/1 67/9 107/4 107/7 119/6 divers [2] 15/1 60/23 divert [1] 148/8	diverted [1] 188/6 divided [1] 236/12 division [4] 64/2 64/9 64/11 65/9 DNA [3] 126/24 197/8 208/1 do [206] 5/17 5/22 6/6 6/23 7/8 7/20 9/11 12/1 13/17 14/8 15/5 17/18 18/12 18/22 21/10 21/11 21/12 21/21 21/24 22/13 24/25 25/17 26/24 27/1 29/3 29/24 30/3 30/3 30/5 30/8 31/21 43/25 43/25 44/18 45/14 50/11 51/5 55/18 55/21 59/6 64/13 69/5 69/22 70/6 70/6 70/24 71/22 73/6 74/2 75/6 76/21 81/3 82/9 82/19 82/21 83/1 83/5 86/16 91/4 91/20 92/15 94/12 95/3 95/25 98/18 99/10 99/25 101/8 102/10 104/19 105/1 113/5 114/22 115/4 115/12 116/18 119/18 119/20 120/25 121/14 122/3 123/19 125/25 126/6 128/8 128/16 128/22 133/18 139/11 140/22 143/7 146/18 147/16 147/23 148/22 149/9 149/13 150/16 156/6 158/16 159/10 164/17 168/17 173/22 183/25 184/24 186/4 186/14 187/5 191/10 192/20 193/13 193/19 195/5 199/5 202/15 208/17 208/19 208/21 208/24 208/24 209/3 209/5 209/11 209/14 209/17 209/19 210/6 210/14 210/18 211/7 211/13 211/16 211/17 212/1 212/2 212/16 213/4 213/7 213/9 213/12 213/14 213/16 213/17 213/24 213/25 214/1 214/6 214/24 215/4 215/7 215/17 215/20 215/21 216/7 216/8 216/9 216/11 217/13 217/24 218/19 221/14 224/8 224/13 225/13 225/17 227/7 228/11 229/6 229/9 230/25 231/10 232/9 232/15 233/19 234/21 235/15 235/15 235/17 235/17 235/18 235/21 236/1 236/16 237/5 237/9 237/18 238/2 238/4 238/5 240/2 242/24 242/25 243/5 243/6 243/7 243/10 243/15 243/17 244/9 244/24 244/25 244/25 245/22 246/7 247/6 document [2] 144/10 184/17 documented [1] 10/24 documents [1] 184/19 does [39] 7/10 8/11 8/15 9/21 10/15 10/22 17/8 19/6 21/19 21/23 22/19 33/2 33/4 33/8 33/9 33/12 33/25 34/20 39/6 64/22 65/5 75/3 77/14 77/16 103/17 142/6 142/16 142/18 151/11 151/13 159/16 172/1 172/11 178/12 183/9 198/21 229/21 231/22 232/13 doesn't [12] 23/2 36/23 130/18 142/15 142/15 144/8 170/18 174/24 192/3 193/24 198/21 245/6 dog [116] 5/11 5/20 5/20 5/21 7/7 7/11 7/17 7/18 8/1 8/2 8/3 8/8 8/14 8/16 9/1 9/11 10/5 10/11 10/18 11/22 12/22 13/11 13/19 13/21 15/3 15/11 15/16 15/20 16/12 16/23 16/24 16/24 17/9 19/8 20/16 21/19 21/23 22/2 22/23 22/25 24/20 24/21 24/22 25/14 25/17 25/18 25/21 25/24 26/1 26/12 27/10 32/25 33/2 33/6 33/9 34/18 35/7 35/22 35/23
----------	--	--

<p>D</p> <p>dog... [57] 36/11 36/13 36/18 37/12 37/12 37/24 38/8 39/1 39/5 39/15 39/20 39/21 40/3 40/9 40/17 41/2 41/5 41/21 42/11 44/1 44/7 45/6 46/6 47/8 47/25 49/4 49/25 50/5 50/7 50/15 50/18 51/6 52/12 52/14 52/20 53/12 53/15 54/1 54/6 54/8 54/11 55/1 58/4 58/7 59/7 59/13 59/19 59/20 59/20 59/23 76/9 76/13 124/9 143/20 161/10 162/16 169/2</p> <p>dogs [69] 5/16 5/17 6/13 6/14 6/16 6/17 6/18 6/20 6/20 6/22 7/16 9/12 11/14 12/1 12/2 12/5 12/6 12/9 12/12 12/16 12/19 14/3 14/18 14/20 14/22 21/2 22/5 22/6 22/10 24/23 24/24 33/10 34/17 34/20 34/21 34/23 35/18 38/22 39/8 39/14 43/3 43/19 43/22 44/13 50/2 50/23 58/10 58/13 58/13 58/15 58/17 58/20 59/24 76/8 76/13 78/17 90/8 90/13 90/15 90/24 104/24 105/4 108/25 109/14 161/1 161/2 161/4 161/4 188/11</p> <p>doing [16] 33/18 37/25 42/12 45/16 71/17 74/19 110/25 112/15 123/14 126/20 127/7 172/25 200/6 210/16 236/23 238/20</p> <p>done [25] 13/25 36/6 55/6 75/19 90/16 96/4 96/5 96/9 100/1 114/20 122/16 127/7 133/16 139/1 141/20 170/3 170/6 170/8 172/24 182/2 182/3 186/5 194/16 205/22 218/6</p> <p>door [16] 21/11 32/4 33/17 55/23 127/9 161/18 171/24 182/12 182/14 182/15 182/25 183/2 183/19 184/5 213/14 231/16</p> <p>doors [1] 160/1</p> <p>doorway [1] 19/22</p> <p>down [42] 13/11 16/23 17/23 22/23 22/25 46/9 54/17 55/9 79/11 86/12 91/25 92/7 95/16 96/1 96/13 96/14 96/19 112/25 114/11 114/12 114/17 117/13 133/12 133/13 137/20 142/20 142/21 142/23 147/6 149/23 150/2 151/17 164/14 200/21 212/25 227/18 228/19 228/25 229/6 231/6 231/22 234/6</p> <p>downpour [1] 91/24</p> <p>downstream [1] 40/14</p> <p>downwind [1] 21/4</p> <p>drape [1] 194/6</p> <p>draw [1] 172/2</p> <p>dripping [2] 42/9 207/7</p> <p>drips [1] 42/13</p> <p>drive [3] 7/7 7/10 149/25</p> <p>driver [4] 60/18 60/19 61/8 238/23</p> <p>driver's [3] 98/5 227/13 238/24</p> <p>driveway [2] 79/11 110/3</p> <p>drive [3] 141/24 149/23 150/3</p> <p>drowning [2] 14/19 60/17</p> <p>dry [1] 92/1</p> <p>ducks [1] 10/1</p> <p>Due [2] 64/24 91/1</p> <p>dug [1] 124/17</p> <p>duly [4] 4/20 63/17 222/20 235/6</p> <p>duped [1] 246/5</p> <p>durable [1] 23/2</p>	<p>duration [1] 243/5</p> <p>during [19] 68/22 77/2 90/1 106/7 106/12 112/17 122/6 123/22 123/24 150/17 157/18 168/8 184/25 186/10 195/17 195/23 238/5 243/14 244/2</p> <p>duskish [1] 94/3</p> <p>dusted [1] 208/22</p> <p>duties [4] 69/10 126/19 165/1 236/10</p> <p>duty [2] 33/8 166/14</p> <p>E</p> <p>each [11] 15/8 78/16 105/17 115/23 118/9 118/23 126/12 127/23 225/3 234/23 236/12</p> <p>ear [1] 35/7</p> <p>earlier [14] 37/16 78/21 117/22 146/9 157/10 165/12 165/16 167/11 171/19 183/17 211/10 215/10 220/6 220/25</p> <p>early [3] 71/20 83/9 113/21</p> <p>ears [1] 173/24</p> <p>easier [2] 13/17 73/8</p> <p>east [4] 57/10 57/22 107/14 191/1</p> <p>easy [2] 9/25 193/10</p> <p>edge [2] 92/11 226/25</p> <p>effect [2] 196/5 217/11</p> <p>effective [1] 54/8</p> <p>effort [7] 16/2 48/23 113/19 114/6 118/6 237/11 237/18</p> <p>efforts [18] 73/15 76/5 85/20 85/25 86/24 89/24 89/25 89/25 104/2 104/4 104/22 113/15 115/18 119/1 119/4 119/5 126/16 236/6</p> <p>eight [6] 9/15 9/16 38/12 90/1 105/4 219/1</p> <p>either [12] 38/15 41/21 47/15 84/11 102/6 112/4 116/2 119/4 171/4 189/12 212/18 235/25</p> <p>elaborate [1] 108/20</p> <p>elaborating [1] 108/23</p> <p>electronics [1] 176/8</p> <p>elements [2] 189/3 194/3</p> <p>elevated [1] 18/20</p> <p>eleven [1] 145/3</p> <p>eliminated [2] 209/6 209/10</p> <p>ELMO [4] 190/12 190/18 193/10 203/3</p> <p>else [18] 74/24 104/15 111/16 111/25 112/2 112/7 112/21 119/3 125/20 129/7 133/9 142/19 164/6 169/6 176/9 182/1 208/17 234/15</p> <p>else's [2] 59/20 133/25</p> <p>elsewhere [2] 84/4 187/17</p> <p>eluding [1] 144/3</p> <p>emergency [3] 6/1 127/10 185/20</p> <p>emit [1] 44/25</p> <p>empathy [1] 132/21</p> <p>employed [3] 63/25 235/13 236/2</p> <p>employee [1] 174/24</p> <p>employees [2] 175/15 243/16</p> <p>employer [2] 174/24 175/1</p> <p>employers [1] 243/16</p> <p>employment [1] 243/14</p> <p>EMT's [1] 75/12</p> <p>enable [1] 114/21</p> <p>enclosed [7] 96/17 96/24 96/25 97/1 100/16 117/17 192/23</p> <p>encountered [1] 149/5</p> <p>end [10] 31/22 56/2 69/23 79/11 86/17 89/20 106/13 114/17 144/20 233/20</p>	<p>ended [6] 57/12 82/7 91/16 97/6 118/6 227/19</p> <p>ends [2] 89/21 89/22</p> <p>enforce [1] 235/19</p> <p>enforcement [60] 5/25 6/6 18/3 19/25 20/14 21/18 28/23 64/3 64/9 66/25 67/1 67/14 69/1 70/9 70/10 70/11 70/14 71/6 71/8 73/14 74/17 74/25 75/1 75/3 76/18 84/1 84/22 85/13 92/24 93/2 93/5 94/23 95/14 95/19 103/11 105/16 105/17 110/13 111/13 113/25 114/10 115/22 115/23 126/9 133/8 134/21 135/6 138/9 149/2 179/11 180/22 185/1 186/10 210/5 217/24 224/2 224/9 229/1 235/19 237/10</p> <p>enforcement officers [1] 66/25</p> <p>engage [1] 24/22</p> <p>English [1] 33/21</p> <p>enormously [1] 39/9</p> <p>enough [11] 42/9 45/19 53/17 55/21 59/9 59/16 61/6 157/17 170/8 219/23 238/16</p> <p>ensure [1] 141/17</p> <p>enter [3] 93/3 95/20 96/6</p> <p>entered [10] 17/3 55/23 60/19 175/23 178/14 181/6 184/10 186/1 202/23 212/19</p> <p>entering [1] 184/16</p> <p>entire [9] 43/10 43/17 55/22 65/4 101/17 123/20 163/6 172/20 218/5</p> <p>entirely [3] 38/21 108/7 190/3</p> <p>entitled [1] 81/11</p> <p>entrance [3] 139/13 227/3 233/6</p> <p>entries [8] 164/13 181/15 184/25 186/9 187/3 203/13 203/21 205/25</p> <p>entry [18] 133/19 143/1 146/18 157/15 159/14 160/11 179/9 179/18 180/20 181/10 181/11 183/25 184/1 184/2 185/6 200/14 200/18 201/4</p> <p>envelope [1] 196/6</p> <p>environment [4] 13/21 13/24 41/17 49/4</p> <p>environments [1] 8/17</p> <p>equipment [2] 68/20 237/1</p> <p>Ertl [1] 95/4</p> <p>especially [4] 9/18 68/4 95/22 190/1</p> <p>essentially [11] 43/21 75/15 84/21 84/23 90/23 93/21 97/17 105/24 109/13 111/2 138/16</p> <p>established [2] 10/4 89/8</p> <p>establishing [3] 10/17 146/1 146/4</p> <p>esters [2] 46/12 46/21</p> <p>etcetera [2] 71/14 105/8</p> <p>evaluation [6] 13/3 13/4 27/25 28/2 34/13 38/6</p> <p>evaluator [1] 8/19</p> <p>even [28] 9/16 34/4 54/2 61/16 73/2 74/5 74/13 80/11 85/16 86/13 88/7 92/17 118/7 131/3 143/20 147/14 148/5 156/12 156/20 158/17 158/25 166/18 167/9 168/14 187/24 209/5 217/5 217/6</p> <p>evening [24] 16/20 22/7 22/9 23/11 23/18 24/7 25/7 26/24 96/12 97/16 104/3 106/11 106/13 112/10 112/13 112/18 120/22 125/22 126/6 176/24 179/13 179/13 179/16 215/6</p>
---	--	---

E	exhibit [75] 8/24 8/25 12/24 12/25 16/16 16/17 16/19 19/13 24/2 25/1 25/16 25/22 28/9 55/6 57/6 82/19 90/21 93/24 94/1 94/3 94/14 97/9 97/25 98/7 99/10 101/12 101/14 107/11 116/23 117/2 124/13 142/4 142/6 144/16 149/19 149/19 157/1 176/11 189/5 189/9 190/2 192/18 194/18 195/14 195/15 195/19 200/12 201/1 202/23 209/16 209/24 210/2 210/17 214/5 214/7 214/10 214/16 215/3 215/13 215/15 226/3 226/11 226/18 229/24 229/25 230/19 231/1 238/19 239/13 240/6 240/13 244/22 245/6 245/14 246/4 Exhibit 102 [1] 176/11 Exhibit 128 [1] 28/9 Exhibit 131 [1] 97/9 Exhibit 132 [1] 97/25 Exhibit 133 [1] 98/7 Exhibit 139 [2] 226/3 226/11 Exhibit 141 [1] 239/13 Exhibit 142 [1] 142/6 Exhibit 143 [1] 192/18 Exhibit 146 [1] 202/23 Exhibit 50 [1] 25/22 Exhibit 86 [7] 55/6 101/12 107/11 149/19 190/2 230/19 231/1 Exhibit No [3] 90/21 229/24 240/6 exhibits [15] 3/1 28/13 28/15 98/14 134/4 134/7 176/10 189/21 190/9 209/20 221/13 238/18 241/23 242/1 245/14 existed [1] 136/25 existence [1] 198/19 exited [1] 58/8 exonerated [1] 217/10 expect [3] 43/1 81/7 206/25 experience [8] 60/10 68/3 70/13 102/16 103/19 134/18 134/25 138/13 experienced [3] 12/21 16/24 70/24 expertise [5] 8/9 102/16 103/24 103/25 124/20 experts [1] 127/23 expiration [1] 241/5 explain [7] 9/22 13/15 16/19 50/4 84/17 87/6 167/4 explanation [3] 216/11 216/13 216/14 exposed [3] 243/3 243/22 243/25 exposure [1] 243/24 extended [1] 130/15 extensive [1] 9/23 extent [2] 47/19 51/8 extra [1] 199/11 extreme [2] 62/19 132/20 extremely [1] 24/19 extrinsic [1] 173/21 eye [1] 126/5	factored [1] 70/16 facts [3] 87/15 139/2 197/4 failed [1] 123/15 fails [1] 36/14 faint [1] 42/10 fair [12] 38/21 45/19 55/21 59/16 116/22 125/1 127/24 136/21 140/24 141/17 164/21 164/21 fairly [2] 82/12 121/24 FALLON [2] 1/13 4/8 false [23] 35/19 35/21 35/25 36/1 36/4 36/15 36/25 37/1 37/6 37/9 37/11 37/16 37/21 38/1 38/1 38/14 38/18 38/22 60/9 60/9 60/13 61/1 61/11 falsehood [1] 39/4 familiar [10] 12/14 71/5 71/7 80/14 89/7 89/24 107/8 142/6 195/2 206/13 family [10] 6/9 40/8 86/8 110/20 127/1 127/18 131/25 132/5 132/9 242/21 fancier [1] 35/14 far [12] 14/4 20/25 23/1 26/1 56/22 57/7 112/22 149/20 174/8 194/1 199/6 217/15 farm [1] 43/14 farther [1] 192/19 FASSBENDER [33] 2/9 63/15 63/16 63/21 63/25 65/8 68/2 72/15 78/5 84/16 89/6 92/21 99/12 101/3 103/1 112/6 117/23 120/5 125/14 126/7 131/21 132/24 134/15 143/2 194/21 202/18 208/10 209/24 210/19 212/16 212/24 215/21 218/3 Fassbender's [3] 77/13 77/22 244/20 fast [1] 198/1 fax [1] 89/15 FBI [2] 67/12 84/12 FEBRUARY [3] 1/8 198/2 198/9 February 28th [1] 198/9 feel [3] 38/8 146/22 242/7 feet [2] 108/2 152/1 felt [4] 20/12 21/15 169/23 197/4 fence [11] 97/23 98/15 98/25 99/7 225/24 227/1 229/17 230/2 232/17 232/19 233/3 fender [1] 100/7 few [15] 23/24 114/2 132/8 134/19 141/19 168/10 171/9 180/3 207/20 220/25 223/23 224/7 224/11 225/14 244/11 field [7] 8/11 8/13 26/12 26/18 38/23 50/6 148/23 fifth [2] 16/21 83/10 figured [1] 228/13 file [2] 77/19 150/23 filed [2] 138/6 139/3 filled [1] 91/25 final [4] 45/5 184/24 184/24 186/6 finally [2] 100/13 218/3 financial [1] 128/11 find [38] 7/12 9/24 11/17 14/10 14/12 14/20 15/2 15/17 15/21 22/21 22/25 23/4 26/23 38/25 39/5 50/19 52/18 55/7 56/7 56/12 61/18 71/25 72/14 74/12 74/15 75/18 82/6 87/12 87/13 116/6 127/12 193/14 193/17 198/11 225/11 225/11 245/15 245/18 finding [6] 39/2 61/5 102/1 125/8
	F	
	F-a-s-s-b-e-n-d-e-r [1] 63/22 facing [1] 94/17 fact [28] 35/22 44/6 49/6 72/5 72/10 72/13 78/8 79/18 85/10 103/7 133/11 138/18 145/23 146/5 154/17 155/7 158/20 161/24 165/19 165/21 182/22 195/23 203/20 212/25 223/13 238/15 240/8 244/3 factor [2] 23/9 59/10	
event [5] 9/19 52/17 143/4 151/22 173/24 events [1] 151/2 ever [17] 11/3 11/6 25/5 25/6 33/9 37/7 46/19 48/2 118/3 149/5 149/9 195/16 195/16 199/13 221/13 233/12 233/12 every [5] 35/2 105/2 110/14 118/20 224/15 everybody [4] 142/23 143/10 223/7 232/13 everyone [2] 114/13 200/21 everything [5] 130/10 131/6 137/19 140/22 161/6 evidence [90] 7/14 10/6 52/16 60/15 61/12 70/4 70/21 70/21 70/23 71/3 71/7 71/14 73/10 73/23 74/14 79/5 79/25 80/1 81/20 81/21 84/2 84/4 84/7 84/10 85/8 87/11 87/14 88/15 93/13 93/21 102/17 102/18 103/15 103/20 103/25 104/14 105/24 106/4 109/14 109/16 117/15 120/15 121/22 122/9 123/22 127/5 127/6 130/3 130/8 145/24 146/6 148/12 148/18 148/19 148/23 149/3 149/8 149/14 152/18 153/9 154/11 154/21 158/22 158/22 164/16 164/17 166/22 166/24 167/21 171/20 171/21 172/6 173/13 173/18 173/21 177/2 177/2 197/4 198/7 204/13 208/15 213/3 213/20 215/22 216/1 220/14 220/17 221/8 221/9 221/20 evidentiary [8] 80/17 93/7 97/5 102/2 116/5 116/7 121/21 122/11 ex [2] 170/13 174/19 ex-boyfriend [2] 170/13 174/19 exact [2] 143/13 196/4 exactly [13] 30/23 40/23 40/23 52/17 80/8 80/12 82/13 102/4 142/15 150/11 156/3 211/15 233/16 examination [35] 2/4 2/5 2/6 2/7 2/10 2/11 2/12 2/13 2/14 2/16 2/17 2/20 5/5 28/17 55/9 60/7 62/1 63/23 76/4 78/3 84/5 84/8 130/25 131/17 131/19 134/13 173/1 186/22 186/24 208/8 218/14 221/18 223/1 230/17 235/11 examine [1] 197/9 examined [8] 4/21 63/18 97/4 197/5 197/11 205/10 222/21 235/7 example [18] 32/1 33/16 36/4 40/1 40/13 47/8 51/25 54/17 56/9 61/10 67/22 69/23 70/20 81/19 81/25 108/25 127/8 163/15 examples [1] 70/19 exams [2] 128/9 128/9 except [1] 199/16 excitement [1] 62/20 exclusion [1] 173/7 exclusively [1] 50/8 excuse [4] 67/1 71/16 117/19 171/9 excused [5] 63/2 222/10 234/19 242/11 244/4 executed [1] 85/1 executed [1] 85/5 execution [2] 199/25 200/4 exercise [2] 36/5 36/9		

F	foregoing [2] 247/7 247/7 foreground [2] 192/15 192/21 foremost [3] 74/12 83/19 164/19 forensic [2] 84/14 94/8 forks [1] 114/17 form [2] 104/21 146/13 formed [3] 105/15 115/15 120/15 former [2] 125/2 139/5 forming [1] 105/24 forthwith [1] 84/24 Forty [1] 89/2 forward [1] 198/1 forwarded [1] 217/4 found [52] 11/7 11/9 14/15 20/3 24/11 60/12 61/14 66/19 70/4 71/3 73/23 79/1 94/5 104/14 109/15 112/12 115/9 116/13 118/23 121/2 123/4 124/11 127/10 182/16 185/21 185/22 187/17 195/25 196/19 197/12 198/7 198/12 198/15 199/3 199/13 199/22 204/1 205/12 206/21 206/22 207/25 213/4 215/15 219/23 226/12 228/11 229/22 230/6 232/22 238/9 238/25 239/2 foundation [1] 27/19 founded [1] 6/3 four [27] 12/9 29/22 57/15 57/24 62/3 79/9 82/8 107/22 131/22 154/10 154/20 170/19 175/11 175/12 175/14 176/4 176/23 178/9 178/25 178/25 184/11 185/9 201/20 203/8 203/9 207/24 221/12 fourth [2] 5/20 179/8 fox [3] 74/8 136/9 155/12 fragment [1] 204/3 fragments [5] 197/10 197/13 199/21 203/5 204/1 free [1] 146/23 freezing [1] 22/18 Friday [3] 126/8 144/22 196/2 Froehlich [1] 157/14 front [17] 8/24 12/24 31/22 92/19 93/22 97/21 100/7 114/17 114/18 161/18 190/10 207/6 225/25 229/14 241/7 241/13 241/14 full [1] 108/4 functions [2] 13/8 135/5 funnel [3] 82/18 137/17 137/20 funneling [1] 82/18 funny [1] 169/8 further [23] 2/14 13/16 21/7 28/10 32/13 32/18 61/23 62/24 84/5 84/7 84/17 113/14 118/25 128/1 128/2 129/19 131/7 131/10 150/14 151/17 151/18 221/18 243/24	47/5 47/20 gather [1] 29/15 gathered [1] 139/1 gave [3] 19/2 51/25 60/20 general [8] 4/8 64/8 79/15 138/18 138/20 162/23 230/7 235/22 generalized [1] 79/18 generally [9] 18/6 73/20 79/20 79/24 80/6 126/14 137/22 184/24 235/18 gentleman [2] 141/10 238/3 gently [2] 11/5 228/25 German [4] 7/5 25/10 34/15 59/4 gets [5] 34/24 35/4 39/16 81/21 98/17 getting [10] 22/15 62/7 82/8 82/12 116/20 120/18 122/1 147/4 197/21 245/25 Gibson [3] 83/2 83/3 83/4 give [11] 9/8 14/24 17/20 18/23 30/1 36/14 41/22 47/11 50/11 54/11 70/19 given [9] 15/4 15/6 15/12 26/22 26/24 46/24 51/3 109/11 224/14 gives [4] 17/12 35/22 47/2 47/21 giving [3] 14/22 17/9 18/9 Glenfield [1] 187/21 globally [2] 73/12 86/1 gloves [4] 183/19 228/8 228/9 238/17 goal [4] 71/21 71/24 72/2 72/8 goes [6] 7/25 13/21 82/16 100/15 143/11 174/2 going [105] 13/15 14/5 20/6 25/15 30/22 32/15 35/14 40/24 42/13 42/17 47/7 49/9 52/6 53/12 53/15 54/10 63/9 65/7 66/5 70/20 71/16 72/4 72/6 74/2 76/7 76/20 76/20 76/21 79/3 80/25 81/1 81/7 81/9 81/10 81/14 87/8 87/9 88/10 89/2 91/18 92/18 92/19 92/25 93/23 97/8 106/9 106/22 107/11 110/3 111/2 112/21 113/2 118/13 122/2 125/17 126/12 127/22 136/20 143/24 144/1 144/14 145/22 150/19 155/12 161/6 164/21 169/8 170/6 171/1 171/3 171/8 172/4 172/17 172/22 173/4 173/8 174/6 174/7 181/19 182/8 185/4 189/5 189/7 190/12 192/19 193/2 202/6 202/17 220/9 221/10 222/8 225/4 226/16 226/17 230/20 234/23 238/15 238/17 239/12 240/12 242/7 242/11 242/14 244/17 246/6 gone [5] 60/22 61/3 61/6 205/15 233/8 good [20] 4/6 4/11 5/4 28/19 28/20 40/23 42/20 53/21 76/23 103/12 114/8 121/4 134/15 134/16 143/7 150/6 157/17 158/16 186/15 225/7 gotten [2] 24/20 136/17 gradations [1] 34/11 grass [1] 41/16 gravel [3] 119/9 124/18 232/20 gray [1] 192/8 great [6] 5/10 5/23 6/3 12/3 31/3 67/21 green [5] 136/12 196/1 196/7 196/8 208/12 ground [4] 41/10 41/16 42/1 43/17 grounds [1] 39/25 group [14] 5/24 18/21 69/11 70/5
finding... [2] 141/13 199/10 findings [2] 127/24 128/1 finds [1] 13/22 fine [9] 52/4 52/7 52/7 62/13 63/11 113/7 156/7 158/1 214/12 finger [2] 53/13 54/10 fingerprint [1] 15/10 fingerprints [1] 126/24 finish [2] 119/7 183/23 finished [2] 105/5 128/22 fire [6] 6/1 67/19 67/19 114/9 129/15 224/1 firearms [11] 106/10 117/23 117/25 118/8 118/10 164/4 178/20 187/2 187/4 187/7 187/10 firefighter [1] 224/8 firefighters [9] 105/10 105/18 110/13 113/22 115/21 115/24 123/23 123/24 236/21 firemen [1] 223/19 fires [1] 125/7 firmly [1] 243/19 first [78] 4/20 12/7 13/25 16/22 17/7 18/17 23/8 23/10 23/12 26/10 52/2 63/17 72/5 72/7 72/7 73/1 73/13 73/18 73/19 74/5 74/5 74/6 74/6 74/12 75/3 75/6 77/7 78/6 80/9 83/19 86/8 90/1 90/4 92/8 93/23 95/15 97/10 101/4 108/4 121/19 121/21 121/25 129/12 139/11 143/1 144/22 150/2 152/13 158/9 159/14 163/10 164/12 164/13 165/21 166/2 166/2 166/5 169/13 169/14 173/11 175/7 183/24 185/6 191/20 192/9 193/20 203/12 203/13 205/24 213/2 213/9 222/20 226/3 226/16 231/21 235/6 240/19 243/8 first-aid [1] 52/2 fish [1] 15/22 fit [5] 159/16 180/17 181/7 197/2 197/4 five [13] 22/8 37/15 37/19 38/11 85/1 135/2 186/12 186/17 201/17 203/8 203/13 203/21 234/22 flat [2] 110/22 227/18 flip [1] 11/3 floor [5] 42/13 52/1 52/10 203/24 204/11 flourescent [1] 196/8 fluid [8] 51/16 51/19 52/22 52/24 56/7 73/22 74/1 163/3 fluids [2] 40/25 41/5 fob [1] 122/14 focus [7] 81/2 90/18 149/12 149/14 152/21 173/7 174/1 focused [1] 138/21 fold [3] 228/1 228/2 233/13 folded [8] 227/18 227/21 227/21 227/24 228/4 228/22 230/8 239/3 folks [1] 42/10 follow [7] 14/1 15/13 50/21 87/20 106/9 127/7 177/21 follow-up [1] 127/7 follow-ups [1] 106/9 followed [1] 174/5 following [2] 180/25 202/16 follows [4] 4/21 63/18 222/21 235/7 force [1] 61/6 forcing [1] 209/2	G GAHN [3] 1/15 4/9 208/19 garage [49] 24/18 24/25 25/6 57/4 57/22 59/8 107/16 109/23 109/24 110/1 110/5 110/8 124/8 124/15 124/16 127/9 160/8 177/24 178/10 182/12 182/14 182/15 182/25 183/1 183/10 183/12 183/18 183/21 183/24 184/5 185/4 185/6 185/10 186/1 186/1 186/9 198/8 198/12 199/22 200/1 200/18 201/23 203/14 207/16 207/18 207/18 207/20 208/2 220/15 garages [1] 183/20 gas [2] 15/15 47/16 gases [6] 44/25 46/7 46/23 47/1	

G

group... [10] 223/18 223/23 224/3
236/13 236/14 236/16 236/18
236/22 237/7 238/2
groups [2] 67/24 236/12
Grove [2] 29/25 30/11
guard [1] 144/7
guarded [1] 95/9
guarding [1] 155/13
guess [17] 43/4 53/8 54/21 59/16
68/2 91/22 96/15 108/11 157/17
167/7 176/14 203/9 230/20 233/22
237/8 237/19 245/8
guide [1] 58/13
guilty [2] 197/3 197/16
gun [1] 118/11
gunmen [2] 160/20 160/20
guns [5] 106/10 106/15 106/17
106/23 198/14
guys [1] 166/3

H

hacksaw [1] 186/3
had [200] 8/4 9/16 9/17 18/14
19/9 22/10 23/13 24/16 24/20
26/9 26/13 26/17 26/18 30/8 30/8
31/16 32/8 37/20 42/23 42/24
49/6 55/9 60/10 60/16 60/19
60/19 61/3 61/4 61/6 61/11 66/13
66/19 68/3 68/18 69/12 69/15
69/20 70/25 73/5 75/2 76/7 77/9
78/5 78/14 78/17 78/21 78/22
79/7 79/8 83/18 85/10 86/3 86/6
87/1 90/24 91/20 92/18 96/17
97/13 99/25 102/15 103/22 104/1
104/13 105/23 105/25 106/1 106/2
106/14 106/15 106/16 107/6
108/24 108/25 109/23 109/25
110/1 110/25 112/12 112/25
113/11 114/4 114/16 114/21 116/7
118/11 120/24 122/11 123/10
123/17 123/18 124/9 125/17 127/5
128/13 129/12 129/14 132/4 132/8
132/9 132/11 132/18 136/16
136/18 138/6 140/12 140/18
140/19 141/10 141/19 141/19
142/24 144/11 148/10 148/21
148/22 149/5 149/9 152/10 154/13
158/5 163/6 163/12 165/1 165/10
165/15 165/22 166/9 166/9 166/12
166/12 166/18 166/19 166/19
167/9 167/10 167/18 167/25
167/25 168/5 168/16 169/25
172/18 175/9 175/21 176/22 177/8
178/20 179/16 181/15 185/22
186/5 188/6 188/9 190/2 191/14
196/7 197/14 198/7 198/23 199/5
201/1 204/6 204/15 205/10 205/14
207/25 209/5 209/6 213/14 215/9
217/13 218/19 219/12 219/23
220/5 220/23 220/24 221/9 224/19
228/8 228/9 228/14 228/16 228/18
230/13 232/16 234/6 234/7 236/13
236/14 238/9 238/9 238/10 238/11
238/21 239/3 239/22 246/6 247/13
hadn't [3] 32/11 77/19 141/20
hair [3] 41/22 95/1 206/22
Halbach [22] 5/9 5/13 50/1 51/10
66/17 72/14 136/16 171/18 177/8
177/19 182/6 198/8 199/13 204/15
209/7 213/4 213/22 214/25 220/14
220/21 221/3 239/10

Halbach's [10] 51/3 182/16 183/14
207/21 208/1 213/10 213/13
214/18 234/5 239/6
half [4] 176/5 176/15 176/23 200/4
halfway [1] 150/13
hand [7] 4/18 51/25 101/13 101/15
222/18 235/4 240/12
handle [4] 5/11 7/8 29/21 59/24
handled [7] 11/23 59/7 59/22
217/8 219/2 219/3 225/9
handler [5] 20/10 37/13 38/3
50/25 92/14
handlers [1] 8/8
handling [3] 5/19 35/17 58/10
hands [2] 228/7 233/23
hanging [1] 33/9
happen [7] 69/17 77/18 104/15
118/5 119/3 119/23 158/2
happened [13] 16/8 65/13 69/20
73/5 73/9 104/9 104/13 114/7
126/14 155/19 155/21 156/1
173/25
happening [6] 69/20 86/23 110/12
110/16 111/6 128/7
happens [2] 41/8 173/24
happy [1] 52/6
hard [4] 10/1 10/18 10/20 10/23
hardship [1] 132/20
harm [1] 160/19
hasn't [1] 33/21
haven't [4] 14/4 53/18 153/14
191/13
having [12] 4/20 63/17 117/24
130/8 153/1 156/4 176/7 202/23
203/12 216/25 222/20 235/6
HazMat [1] 89/13
head [2] 140/4 204/15
headed [1] 65/25
hear [9] 5/3 27/14 72/4 72/6
118/13 126/12 127/22 153/17
181/18
heard [18] 46/17 67/22 76/8 87/25
90/5 90/7 92/24 95/7 111/5
153/20 161/9 161/13 171/5 171/12
172/16 174/9 176/11 176/16
hearing [5] 130/15 131/12 165/24
165/25 245/19
hearsay [1] 146/4
held [1] 16/11
help [10] 5/12 16/19 65/5 124/23
135/6 151/11 201/22 224/23
226/21 237/10
helpful [3] 29/9 135/20 184/13
helping [3] 14/18 18/15 123/14
helps [1] 15/1
hen [1] 155/13
here's [1] 150/9
hereby [1] 247/6
herein [4] 4/20 63/17 222/20
235/6
Hermann [2] 139/25 153/22
hesitancy [1] 103/2
hey [3] 166/3 181/23 220/4
hidden [1] 36/14
high [5] 7/7 7/10 136/20 137/8
141/7
Highway [3] 31/6 142/17 200/16
hiking [1] 13/23
hinting [1] 18/9
historical [1] 40/7
history [3] 9/21 135/25 136/5
hit [8] 41/2 41/5 47/9 53/12 53/15
53/18 54/12 109/14

hits [2] 42/1 162/11
hitting [1] 52/21
hold [2] 77/12 81/22
holding [2] 82/7 122/2
holes [1] 198/24
Holstein [1] 67/7
home [4] 30/13 55/17 56/6 65/23
homes [1] 132/19
homicide [18] 64/20 64/23 68/4
71/6 74/10 88/20 88/21 103/24
158/17 158/23 159/7 163/23 164/2
170/3 170/6 170/10 177/3 215/23
Hon [1] 1/9
Honor [13] 4/6 28/8 29/6 63/15
80/25 113/1 131/18 167/1 171/14
186/23 193/8 213/23 214/6
hood [6] 94/20 97/3 97/11 97/14
99/8 100/2
hoods [1] 105/12
hooked [1] 96/22
hope [2] 12/6 142/25
hopefully [2] 82/14 160/2
hoping [1] 72/14
Hospitals [1] 45/22
hour [6] 31/7 35/2 129/4 178/12
200/5 200/5
hours [18] 8/3 8/5 37/3 54/7 72/8
74/5 85/5 85/6 113/3 145/6
154/11 154/20 176/5 176/23
184/11 185/9 200/15 201/11
house [6] 109/24 110/1 110/4
155/13 198/13 207/2
How's [2] 31/2 231/17
however [1] 152/1
huge [1] 103/22
human [80] 5/20 6/20 7/6 8/1 8/18
9/5 9/24 10/6 10/7 10/10 11/2
11/4 11/23 12/2 12/5 12/12 12/18
12/21 13/7 13/10 13/11 13/13
14/8 15/3 15/16 15/18 15/20
16/12 17/10 17/11 17/19 20/13
22/6 26/5 26/10 26/11 27/23 28/5
39/4 39/20 39/21 40/3 40/18
40/20 40/20 40/24 40/25 41/5
41/15 41/18 41/20 42/1 43/8
43/22 44/1 44/9 45/1 45/6 45/7
45/16 46/3 46/9 47/1 47/21 47/25
48/18 48/24 49/10 49/22 50/2
51/5 51/15 51/16 51/23 52/9
52/14 56/7 58/15 161/2 161/3
humans [2] 44/5 61/16
hundreds [2] 58/20 170/6
Hunsader [1] 143/2
hurricanes [1] 14/6
husband [2] 18/4 29/17

I

I'll [1] 240/19
I'm [131] 5/10 5/19 13/15 25/15
25/24 27/11 27/21 30/22 30/25
32/15 35/14 38/1 40/9 41/25 42/3
42/5 42/12 44/18 45/23 46/16
49/9 52/6 53/10 61/22 62/7 64/1
64/15 65/7 67/10 73/3 73/4 76/7
79/14 80/25 81/14 81/19 82/11
90/23 92/25 93/20 94/2 94/14
95/6 96/8 97/8 99/9 100/15
101/12 101/20 107/11 115/20
117/19 119/8 121/13 128/21
130/10 130/14 133/20 134/25
139/7 140/3 141/21 141/22 144/14
144/23 145/22 146/22 149/18
149/25 150/19 151/20 154/2

I	236/13	120/5 120/25 123/1 125/23 126/8
I'm... [59] 164/19 166/17 167/8	individually [2] 105/20 237/6	127/15 133/10 136/19 141/1
169/11 169/12 170/5 171/1 172/22	individuals [13] 68/11 69/1 79/7	145/23 146/14 148/25 158/13
173/6 174/6 174/9 176/8 176/10	79/9 89/4 94/21 102/10 102/14	160/8 162/19 166/11 166/22 168/8
177/20 178/2 179/8 181/9 181/19	124/20 127/3 148/11 171/17	169/6 171/3 171/15 173/8 175/4
182/8 183/12 185/4 185/17 187/13	216/19	179/2 179/17 180/13 182/11
187/16 187/24 187/25 188/23	indoor [1] 88/24	183/20 183/21 197/21 205/15
189/5 189/7 191/20 192/19 195/15	inference [4] 172/2 172/11 211/1	207/16 207/18 214/23 236/12
196/4 196/5 202/6 202/9 202/17	222/7	introduce [1] 34/21
204/21 205/2 205/22 213/23 220/9	inferences [1] 171/25	introduced [2] 171/15 173/9
221/10 222/4 222/8 225/17 230/20	information [25] 18/14 70/3 73/23	introducing [1] 173/13
231/8 231/8 233/7 234/23 235/14	78/16 81/25 82/6 82/9 82/15	inventory [2] 85/7 196/20
235/16 239/12 240/17 242/7	83/18 87/10 118/20 119/21 120/18	investigate [5] 21/7 140/16 170/22
242/14 245/16 246/6	129/20 133/6 139/1 163/4 163/4	174/17 174/23
idea [4] 30/1 39/14 44/23 108/5	163/20 169/12 175/9 204/16	investigated [3] 87/4 137/19
identical [2] 215/8 215/16	204/21 243/11 243/23	169/21
identically [1] 215/14	informed [7] 106/14 106/15	investigation [61] 49/12 64/2
identification [8] 25/16 142/4	106/18 106/20 113/10 195/10	64/12 65/9 65/10 65/17 66/6
195/14 214/10 214/16 215/3	242/16	66/15 66/16 66/22 66/24 67/2
215/13 238/19	initial [2] 90/16 113/10	68/5 68/16 68/23 69/3 71/21
identified [6] 112/16 171/17 189/6	initially [8] 19/9 38/2 69/18 89/12	71/22 71/25 72/7 72/8 72/23
226/18 239/18 245/8	90/15 91/8 141/25 162/13	73/19 74/10 74/11 80/18 80/20
identifies [1] 245/11	initials [1] 143/3	83/13 83/20 86/1 87/7 88/9 88/20
identify [7] 66/24 189/22 200/12	inquiries [1] 130/9	98/20 110/18 128/2 137/12 137/15
217/1 240/21 241/15 244/18	inquiry [3] 77/8 128/23 132/24	140/19 140/24 141/2 141/4 141/8
identifying [3] 28/5 120/23 128/17	inside [11] 33/6 57/4 104/6 116/13	141/17 145/1 147/17 147/20
ignition [3] 123/1 123/2 182/5	168/15 207/20 220/15 221/14	156/18 159/6 163/22 164/21 173/3
Illinois [5] 9/15 10/5 12/9 39/23	225/4 228/21 228/25	174/3 174/4 177/17 195/24 198/6
60/20	insider [1] 138/14	205/4 207/25 215/24 218/5
illuminate [1] 126/1	Inspector [2] 139/18 140/7	investigations [11] 64/20 64/21
image [1] 97/25	inspectors [1] 237/21	64/23 64/25 68/4 79/19 80/15
imagine [4] 67/24 71/24 89/16	instance [6] 11/11 13/22 21/3	86/16 98/21 170/3 170/7
234/25	70/25 160/14 170/9	investigative [5] 89/25 104/22
immediately [7] 42/16 80/2 130/5	instances [1] 65/3	119/5 126/16 235/23
160/6 160/8 181/25 243/24	instructed [1] 224/18	investigator [20] 68/10 69/13
implement [2] 67/23 68/19	instrumentologies [1] 164/1	103/1 108/6 108/21 111/10 115/9
implication [1] 27/16	insure [1] 133/5	125/4 132/13 137/3 139/22 153/17
important [4] 93/9 98/20 180/5	intelligence [5] 81/24 82/15 87/10	156/8 156/18 157/19 196/18
205/4	87/19 120/18	197/11 217/20 218/20 229/12
impound [1] 91/1	intend [1] 21/19	investigators [22] 18/1 18/3 21/21
improper [2] 202/8 243/4	intense [1] 37/25	49/13 49/18 49/21 56/1 69/12
in [601]	intention [1] 24/16	69/16 70/1 80/13 85/18 89/23
inability [1] 39/5	interaction [1] 24/24	102/15 106/4 125/2 125/3 125/11
Inaudible [1] 171/7	interest [11] 83/13 83/24 136/6	175/16 184/19 197/5 204/12
inch [2] 176/14 176/15	140/14 140/15 154/14 154/24	involuntarily [1] 243/22
incinerated [1] 26/10	165/3 165/5 166/11 216/19	involve [2] 70/22 173/20
include [3] 35/11 86/1 243/11	interest with [1] 216/19	involved [22] 5/14 6/10 66/3 67/2
included [6] 58/24 90/25 91/1 96/6	interested [9] 20/5 30/25 34/17	68/5 69/2 72/23 85/19 90/6 92/3
109/4 110/17	34/23 35/19 36/1 47/18 47/19	96/10 96/11 104/11 111/16 118/11
includes [1] 78/7	53/25	138/24 154/25 155/3 157/3 216/5
including [9] 6/5 121/2 158/17	interesting [1] 14/15	224/9 237/17
158/22 161/18 164/2 177/2 187/10	interior [3] 20/15 55/24 229/21	involvement [4] 5/8 134/1 150/17
242/21	interiors [1] 13/12	217/21
inclusive [1] 98/15	interject [1] 115/13	involving [2] 126/1 173/17
incorporated [1] 6/3	internet [2] 242/25 243/10	inward [1] 227/22
indeed [1] 37/6	interpose [1] 171/2	ish [2] 96/12 145/2
indicate [1] 46/2	interpretation [1] 34/11	issue [11] 53/22 130/12 149/6
independent [1] 218/20	interpreting [1] 34/10	153/3 172/6 172/8 172/18 172/20
independently [1] 154/2	interrupt [2] 19/13 225/17	172/21 173/22 219/5
Indian [1] 39/25	intersection [1] 142/17	issued [2] 205/7 207/24
indicate [2] 19/1 197/15	interview [1] 89/5	issues [2] 130/21 172/22
indicated [7] 10/25 11/4 152/3	interviewers [1] 70/1	item [6] 50/16 214/2 214/2 214/17
163/12 180/3 198/23 198/23	interviewing [1] 110/19	215/4 228/11
indicating [1] 13/6	interviews [9] 73/24 86/19 86/21	items [32] 84/24 84/24 84/25 85/7
indication [11] 14/24 14/25 17/10	106/8 111/1 119/22 127/3 128/2	85/14 86/5 97/2 97/4 97/6 97/7
17/19 18/10 18/24 19/3 36/14	128/8	106/23 107/2 109/2 109/3 130/23
157/5 161/9 177/7	into [68] 7/25 14/1 14/4 14/9	163/12 164/6 164/10 172/13
indications [1] 115/5	14/10 14/14 21/13 22/10 42/21	177/13 177/15 177/18 178/22
indicator [3] 17/12 17/14 21/9	53/9 61/7 64/16 70/16 75/13 76/3	178/23 194/4 203/15 203/18
indicators [1] 17/20	79/13 79/25 80/13 87/7 88/8	215/22 216/1 220/13 224/19 228/6
individual [8] 15/9 71/11 79/13	88/11 95/16 96/25 100/24 101/1	itself [6] 24/11 89/2 118/1 132/25
119/11 126/13 135/13 192/11	105/10 105/11 105/18 112/10	151/25 154/23
	114/21 115/22 116/20 119/13	

<p>J</p> <p>jail [3] 216/23 216/24 216/25 jailer [1] 216/22 jailers [1] 114/5 Janda [5] 57/17 107/9 110/3 132/2 132/12 Janda's [3] 107/19 109/25 188/2 Jaws [1] 114/22 jeans [1] 224/20 Jeff [1] 157/14 JEROME [2] 1/19 4/12 Jerry [2] 65/14 66/11 jewelry [1] 236/25 job [3] 49/14 103/13 168/17 John [1] 95/4 JR [3] 2/15 222/19 222/24 judge [43] 1/10 4/16 27/10 60/6 61/21 62/13 63/5 74/8 76/22 81/6 81/17 84/22 108/9 113/5 116/17 116/23 128/21 129/10 131/5 134/3 134/12 145/22 146/12 146/16 154/15 171/1 171/12 172/4 172/24 186/14 197/21 202/7 211/2 214/1 218/11 220/8 221/2 221/24 222/13 230/15 234/22 241/20 245/23 judges [1] 111/23 judicial [1] 109/5 JULIE [6] 2/3 4/17 4/19 4/24 77/9 92/19 junkyard [4] 14/11 198/14 198/18 223/20 juror [1] 243/17 jurors [7] 84/18 171/9 222/15 223/4 223/8 242/18 242/22 jury [66] 1/4 5/7 9/8 9/22 14/16 16/5 16/8 16/17 34/4 63/8 65/12 66/9 66/25 76/25 77/4 77/24 81/11 90/10 91/7 93/23 94/14 94/15 97/15 101/8 103/6 104/21 107/12 111/11 113/19 120/14 124/13 128/6 129/2 129/5 129/8 131/15 142/9 171/5 171/10 172/2 172/10 174/10 174/11 186/19 188/14 189/8 190/1 190/20 193/9 199/11 208/10 211/24 225/1 226/10 226/17 227/11 229/24 238/8 239/13 239/18 240/21 241/2 242/13 242/17 244/3 244/6 Justice [4] 64/2 64/6 64/7 66/20</p>	<p>229/17 236/23 237/2 238/16 kinds [12] 6/14 6/14 6/23 6/25 47/11 58/24 84/7 126/15 128/7 130/13 161/4 164/10 kingdom [1] 47/15 kit [1] 183/13 knife [3] 82/4 163/17 206/18 knives [1] 164/2 knock [1] 20/6 knocking [1] 144/22 knowing [8] 81/23 82/13 108/22 121/20 133/2 135/16 216/4 217/19 knowingly [1] 164/25 knowledge [14] 80/16 95/11 100/17 115/1 133/16 138/15 139/10 140/23 148/21 166/17 177/17 180/9 220/3 247/14 known [10] 7/4 16/4 50/12 147/24 165/1 166/9 166/9 166/12 166/19 167/9 knows [5] 16/5 36/6 36/10 171/19 223/7 KRATZ [28] 1/11 2/4 2/6 2/10 2/12 2/14 2/16 2/20 4/8 4/14 27/20 27/21 30/23 35/15 60/4 63/12 77/12 77/25 81/5 108/19 130/6 131/16 157/12 208/6 222/11 232/5 232/16 234/15 Kucharski [3] 178/6 179/1 181/2</p>	<p>76/17 84/1 84/22 85/13 92/24 93/2 93/5 94/22 95/14 95/19 103/11 105/15 105/17 110/13 111/12 113/24 114/10 115/22 115/23 126/9 133/8 134/21 135/6 138/9 149/2 173/17 179/11 180/22 185/1 186/9 210/5 217/24 224/2 224/9 229/1 237/9 lawfully [4] 45/10 45/12 45/14 45/17 laws [2] 235/19 235/20 lawsuit [12] 138/6 138/11 139/3 165/11 167/11 167/12 168/22 217/17 218/1 218/16 219/13 219/24 laying [4] 203/24 204/10 206/16 229/18 lead [13] 66/5 66/14 68/10 69/12 85/18 87/16 89/23 103/1 108/5 115/9 137/3 140/19 217/19 leader [4] 155/25 156/17 156/21 158/3 leading [3] 50/25 141/8 207/16 leads [1] 137/18 leaning [3] 94/20 99/1 99/8 learn [3] 39/24 49/20 165/21 learned [5] 11/13 104/14 127/11 139/2 211/10 leash [4] 19/19 21/20 22/2 50/18 leashed [2] 24/21 25/11 least [21] 29/15 44/23 45/3 56/13 76/4 79/14 112/7 115/8 115/18 130/10 130/19 133/2 151/23 164/10 172/5 172/10 173/22 180/4 194/1 203/21 231/8 leave [7] 29/11 99/9 151/10 176/2 193/25 219/11 245/8 leaving [3] 145/1 242/14 244/8 left [21] 17/1 51/18 51/22 55/2 56/24 57/11 99/17 125/23 131/21 160/6 174/16 177/22 178/14 179/3 180/7 181/6 181/9 199/11 227/3 239/22 242/7 legal [1] 111/13 legged [1] 29/22 Lenk [36] 129/17 145/6 145/15 145/20 145/24 146/9 146/12 146/19 146/24 147/13 147/16 147/24 165/10 165/18 166/21 167/10 168/23 169/5 175/18 178/2 179/1 180/11 181/1 181/13 182/10 183/6 201/11 201/13 201/22 202/15 216/4 217/6 217/11 217/15 217/21 218/23 Lenk's [1] 202/22 less [3] 88/13 95/1 141/6 let's [37] 6/13 13/17 15/4 15/25 22/12 30/9 32/23 37/19 39/22 42/8 42/11 50/4 52/24 52/24 53/6 55/7 70/9 73/12 74/4 88/6 90/4 91/4 97/9 104/18 113/18 119/17 122/3 169/1 169/18 182/4 188/18 190/18 214/11 226/6 230/19 232/14 244/18 letter [8] 195/25 196/4 196/11 196/19 208/12 208/22 209/5 209/11 level [9] 20/23 38/5 38/8 78/13 103/23 103/25 150/5 160/17 160/25 levels [1] 70/13 license [35] 99/10 99/14 123/25 124/1 124/2 224/21 226/12 227/20</p>
<p>K</p> <p>kaput [1] 48/11 keep [3] 7/11 133/6 173/24 Ken [1] 4/8 KENNETH [1] 1/11 kept [1] 155/10 key [10] 122/14 122/17 123/2 123/4 123/4 181/12 181/21 181/24 181/24 182/1 kicked [1] 160/1 Kiel [1] 67/8 kill [1] 171/18 killer's [1] 182/19 kind [49] 5/2 6/24 7/3 7/25 7/25 14/7 17/1 18/19 19/22 21/5 25/13 31/20 33/8 45/8 61/12 61/12 71/18 73/12 75/7 82/16 88/22 89/13 109/13 111/8 116/20 121/17 125/1 133/6 135/11 135/21 136/4 141/2 141/18 150/9 158/7 162/12 163/19 164/1 183/15 183/17 184/16 191/24 225/1 225/23 227/1</p>	<p>L</p> <p>lab [37] 70/25 93/14 93/18 93/20 94/23 94/24 95/1 95/5 95/13 95/25 96/1 96/6 96/20 104/16 106/5 109/8 112/9 112/21 118/13 118/17 118/19 118/25 119/22 120/23 124/22 125/10 125/22 126/18 127/22 168/3 168/11 179/17 182/5 188/6 196/23 199/10 209/2 label [1] 52/12 laboratories [2] 84/12 84/13 Laboratory [5] 78/20 84/11 91/11 94/9 122/21 labrador [1] 9/25 Lakes [5] 5/10 5/23 6/3 12/3 67/21 land [5] 8/22 9/6 10/22 13/2 86/7 landfill [3] 14/11 47/8 47/23 landfills [1] 47/11 lands [1] 41/10 language [1] 33/23 large [4] 48/4 53/16 226/19 229/25 larger [1] 16/18 laser [6] 25/4 99/19 117/6 226/21 230/4 230/24 last [22] 4/23 4/24 9/15 13/4 26/8 61/22 63/20 72/10 76/3 83/20 83/22 87/21 108/12 108/21 126/16 131/22 132/24 144/19 170/1 202/5 222/23 235/9 Lasted [1] 185/15 lasts [1] 54/13 latents [1] 196/9 later [16] 11/1 22/6 22/9 49/11 95/17 116/19 150/20 156/12 156/14 177/18 178/18 179/13 179/16 181/19 183/6 204/17 latitude [1] 81/15 law [62] 1/17 1/19 5/25 6/5 18/3 19/24 20/14 21/18 28/22 64/3 64/9 66/25 67/1 67/14 69/1 70/9 70/10 70/11 70/13 71/5 71/7 73/14 74/17 74/25 75/1 75/3</p>	<p>229/17 236/23 237/2 238/16 kinds [12] 6/14 6/14 6/23 6/25 47/11 58/24 84/7 126/15 128/7 130/13 161/4 164/10 kingdom [1] 47/15 kit [1] 183/13 knife [3] 82/4 163/17 206/18 knives [1] 164/2 knock [1] 20/6 knocking [1] 144/22 knowing [8] 81/23 82/13 108/22 121/20 133/2 135/16 216/4 217/19 knowingly [1] 164/25 knowledge [14] 80/16 95/11 100/17 115/1 133/16 138/15 139/10 140/23 148/21 166/17 177/17 180/9 220/3 247/14 known [10] 7/4 16/4 50/12 147/24 165/1 166/9 166/9 166/12 166/19 167/9 knows [5] 16/5 36/6 36/10 171/19 223/7 KRATZ [28] 1/11 2/4 2/6 2/10 2/12 2/14 2/16 2/20 4/8 4/14 27/20 27/21 30/23 35/15 60/4 63/12 77/12 77/25 81/5 108/19 130/6 131/16 157/12 208/6 222/11 232/5 232/16 234/15 Kucharski [3] 178/6 179/1 181/2</p>

L	201/4 log-in [2] 200/16 200/18 logged [2] 8/5 202/23 logical [3] 60/22 87/16 170/1 logs [7] 37/2 130/8 133/7 142/10 155/8 200/7 243/11 long [13] 5/14 6/2 24/23 26/2 38/9 53/17 58/18 64/3 80/19 81/8 122/2 129/14 134/22 longer [4] 42/2 44/2 54/13 235/1 looked [23] 19/21 60/23 61/10 85/5 97/16 116/15 138/16 138/21 141/18 182/20 189/1 191/14 192/1 224/16 225/7 225/9 225/10 227/15 227/16 230/10 233/18 233/25 234/8 looking [67] 11/21 23/13 28/23 52/15 62/11 72/22 78/7 80/8 80/12 81/24 82/13 85/15 94/15 98/1 102/5 102/14 108/6 108/23 113/16 115/4 116/4 117/2 120/17 121/14 121/15 121/20 123/21 124/13 127/12 158/22 159/22 160/2 163/22 167/21 169/11 177/1 177/5 179/25 182/12 183/8 183/12 183/13 184/16 184/19 185/12 185/19 185/24 186/3 190/14 191/1 191/24 193/23 203/11 203/15 224/18 224/21 226/20 226/22 228/24 236/24 238/11 239/7 239/19 239/20 240/10 240/24 241/12 looks [8] 94/3 97/23 142/20 191/22 192/17 192/18 194/11 200/14 loose [1] 91/17 lose [3] 80/3 121/23 121/23 losing [1] 74/14 lost [1] 129/22 lot [26] 7/5 8/3 8/3 9/11 33/10 37/2 61/1 65/1 80/6 80/15 82/11 83/18 86/15 97/4 101/13 103/20 104/24 109/16 121/3 134/24 159/6 195/5 237/22 237/23 237/24 237/25 love [1] 170/12 low [3] 37/1 37/17 38/19 lower [2] 101/13 101/15 luminal [2] 125/25 180/2 lunch [4] 129/1 129/3 129/4 129/8 luxury [1] 105/23	231/14 231/16 242/7 245/20 246/5 makes [1] 197/21 making [4] 149/12 155/1 155/3 245/13 Malinois [1] 9/3 man [2] 56/11 137/21 management [1] 6/1 MANITOWOC [38] 1/1 30/11 30/20 66/12 67/4 67/5 67/21 68/9 83/6 86/14 89/12 102/23 103/3 106/3 106/3 114/1 114/2 138/7 139/3 139/5 139/7 139/8 140/3 140/3 140/9 140/15 141/10 148/12 153/4 153/23 155/16 157/8 175/14 178/4 201/11 218/3 223/10 247/2 Manitowoc's [1] 68/14 Manitowoc/Calumet [1] 223/10 manner [2] 19/18 77/2 manpower [1] 105/22 many [31] 5/17 10/7 14/19 62/10 68/5 68/6 68/21 68/25 82/5 86/21 125/7 135/8 152/1 161/16 168/8 170/3 170/5 177/15 206/8 215/22 217/24 217/25 217/25 224/5 224/8 225/12 236/17 236/19 237/6 237/9 237/17 map [2] 30/12 30/18 mapping [1] 123/14 March [16] 198/2 199/20 200/2 200/2 200/3 200/14 201/2 202/24 204/1 204/19 204/19 205/3 205/3 205/13 207/23 207/23 March 1st [8] 199/20 200/2 200/3 204/1 204/19 205/3 205/13 207/23 March 2 [1] 201/2 March 2nd [5] 200/2 202/24 204/19 205/3 207/23 Marinette [4] 67/13 86/6 86/11 110/19 mark [6] 29/12 69/13 142/2 150/19 195/12 213/24 marked [19] 3/1 142/4 142/5 195/14 214/1 214/10 214/13 214/16 215/3 215/13 238/15 238/18 238/19 240/20 244/13 244/17 245/1 245/7 245/9 marker [1] 25/7 Marlin [4] 187/11 187/17 187/21 187/25 master [2] 56/21 57/1 mastered [1] 33/21 match [4] 185/24 198/13 239/9 240/8 matched [1] 199/16 material [4] 52/21 54/22 100/3 100/3 math [1] 203/9 matter [13] 4/4 36/5 36/23 40/14 49/6 131/10 143/18 165/21 174/3 219/8 221/7 247/7 247/13 matters [1] 235/23 mattress [3] 206/1 206/16 207/1 mattresses [4] 205/9 205/10 205/17 205/20 maybe [46] 29/5 29/21 30/24 40/6 58/22 58/23 59/16 59/17 65/2 73/9 74/13 75/11 80/5 80/8 82/13 87/19 89/12 91/14 95/17 108/2 118/7 120/3 123/24 137/23 139/25 150/5 151/16 151/18 153/12 153/21 162/2 163/16 177/7 180/4 180/5 182/18 192/7 192/18 200/4 223/23 223/23 224/7 225/14
	M	
	Ma'am [1] 242/6 machine [1] 247/10 made [15] 48/23 69/10 72/15 72/21 79/4 126/16 127/24 132/15 140/13 141/14 141/18 156/6 159/15 174/3 217/10 Madison [3] 78/21 84/11 104/17 Magazine [2] 215/5 215/8 mail [2] 132/11 132/12 main [2] 93/12 105/22 maintain [1] 126/9 maintained [1] 14/5 major [6] 124/4 125/19 152/18 153/9 154/11 154/21 majority [3] 104/4 113/25 114/8 make [27] 59/15 59/21 69/21 75/15 105/2 122/4 129/11 130/9 131/5 137/11 140/23 144/19 155/8 159/5 159/8 160/18 164/20 169/7 173/10 177/25 197/17 214/11	

M		
<p>maybe... [3] 225/16 234/2 234/10 mean [26] 7/10 10/14 10/15 17/8 19/7 19/13 27/20 31/21 35/6 35/21 46/17 49/14 54/3 85/25 94/1 99/16 103/17 122/25 135/15 163/14 168/14 194/25 198/15 237/14 237/14 242/6 meaning [3] 40/20 57/10 122/9 means [7] 14/9 21/6 21/20 45/6 49/22 50/5 52/19 measurements [1] 184/12 mechanisms [1] 173/15 media [2] 136/13 243/4 medical [1] 43/5 medicine [1] 132/10 meet [2] 69/25 132/16 meetings [1] 158/6 member [1] 6/9 members [11] 63/8 76/25 96/6 110/20 126/24 127/2 129/2 132/5 132/9 242/13 242/21 men's [1] 233/12 Menstrual [1] 52/25 mentality [2] 74/2 159/11 mention [4] 10/14 88/2 123/15 160/16 mentioned [18] 9/17 68/9 73/22 84/2 85/9 87/21 93/14 104/1 127/23 132/25 139/18 158/5 178/18 182/4 187/2 188/4 188/25 199/9 mere [1] 198/19 Messrs [1] 213/2 met [5] 7/23 59/24 66/10 104/11 132/1 methane [5] 47/3 47/9 47/12 47/16 47/19 method [1] 133/5 methodically [1] 114/12 methodology [5] 78/6 78/11 79/16 81/7 82/17 microphone [1] 5/2 microscope [2] 137/7 137/9 middle [3] 57/5 204/10 206/16 might [31] 14/16 21/4 45/10 45/19 45/22 51/13 52/6 53/19 80/16 88/15 102/5 102/25 108/7 109/16 111/4 116/4 128/19 146/24 163/4 165/2 171/18 179/22 179/24 186/15 189/1 192/6 193/2 202/20 218/25 224/17 224/20 miles [1] 223/11 military [1] 145/6 Milwaukee [4] 30/13 30/15 84/12 86/12 mimic [1] 44/24 mind [7] 60/16 112/7 119/4 164/20 173/4 190/19 232/15 mine [2] 12/20 165/6 minute [11] 32/24 41/8 42/1 144/14 145/19 162/20 177/22 193/25 219/11 226/17 244/16 minutes [15] 28/21 77/3 77/22 134/19 159/21 171/9 178/12 179/6 180/16 183/7 184/11 185/15 186/2 186/18 234/22 mischaracterization [2] 154/16 154/17 Mishicot [1] 114/8 miss [3] 73/7 159/5 174/23 missed [5] 36/18 37/4 159/8</p>	<p>179/24 181/15 missing [22] 6/9 18/16 50/13 65/17 71/19 71/22 71/24 71/25 72/18 73/1 73/3 99/21 122/4 136/16 136/22 152/22 158/12 159/7 170/19 174/24 183/8 183/13 mistake [1] 36/20 mistaken [1] 153/22 mix [1] 90/12 mixed [3] 90/13 161/3 244/23 molecular [1] 46/23 moment [7] 28/22 29/13 60/6 61/24 67/12 151/5 191/21 moments [1] 168/11 Monday [13] 113/18 113/21 115/11 117/8 118/7 118/15 118/16 118/21 119/3 119/10 120/24 180/11 244/5 monotonous [1] 98/18 monthly [1] 8/7 months [9] 9/10 72/6 72/10 201/17 201/20 203/8 203/9 203/9 207/25 morn [1] 196/3 morning [20] 4/3 4/6 4/11 5/4 28/19 28/20 56/14 76/23 77/1 77/7 113/22 120/15 123/10 127/19 178/15 181/5 185/8 202/16 202/24 244/5 mortuaries [1] 40/13 mortuary [1] 40/15 most [31] 6/25 7/2 12/21 14/25 16/23 16/24 44/1 45/5 49/9 49/10 70/18 71/10 75/6 87/16 88/14 97/6 98/21 99/7 103/23 104/10 104/10 119/2 136/12 145/1 149/19 153/18 169/23 170/9 170/12 197/12 233/19 motion [1] 173/12 motive [13] 171/3 171/16 171/18 171/22 171/25 172/8 172/9 172/12 172/14 172/18 172/21 173/8 173/14 move [13] 15/25 28/8 82/14 104/18 113/18 115/17 119/17 134/3 197/24 204/25 221/25 229/11 241/20 moved [3] 97/17 97/18 114/18 moving [3] 44/20 91/9 121/14 Mr [15] 35/15 81/5 108/19 153/17 172/2 172/8 172/11 196/18 197/16 197/22 198/8 199/17 208/5 211/23 217/10 Mr. [152] 4/14 27/7 27/18 27/20 27/21 30/23 57/22 59/8 60/4 60/9 63/12 63/25 77/12 77/13 77/22 77/25 83/12 86/6 107/9 110/4 117/24 130/6 131/16 134/11 134/15 138/1 138/22 139/2 140/16 144/17 146/9 149/3 157/12 159/15 160/7 161/11 161/21 164/14 165/11 166/4 166/11 166/22 167/12 167/13 167/19 168/10 168/23 168/24 169/6 169/14 169/20 171/17 171/21 172/1 172/7 172/14 172/20 172/23 173/2 173/6 173/7 174/12 175/7 175/24 176/4 177/24 178/21 179/2 179/9 179/17 180/13 180/22 181/11 182/11 184/2 184/9 184/25 186/1 186/21 187/3 187/11 197/2 199/22 200/1 201/22 201/23 202/15 202/18 202/20 202/22 205/19 205/25 206/1 206/16 207/2 207/17 208/1 208/11 208/13 208/14 208/19</p>	<p>208/21 208/25 209/2 209/13 209/15 209/24 210/4 210/18 210/19 211/7 211/18 212/3 212/7 212/9 212/25 213/11 215/6 215/16 215/21 216/4 216/4 216/5 216/22 217/3 217/5 217/6 217/10 217/11 217/13 218/12 219/1 219/16 219/24 222/11 222/14 223/3 223/12 230/15 230/16 230/22 231/10 232/5 232/16 234/15 234/22 238/6 238/16 239/1 240/12 241/1 242/5 Mr. and [2] 86/6 110/4 Mr. Avery [15] 83/12 138/1 138/22 139/2 140/16 149/3 166/4 169/20 172/1 173/2 173/6 173/7 197/2 207/17 217/13 Mr. Avery's [52] 57/22 59/8 107/9 117/24 159/15 160/7 161/11 161/21 164/14 165/11 166/11 166/22 167/12 167/13 167/19 168/10 169/6 169/14 171/21 172/14 175/7 175/24 176/4 177/24 178/21 179/2 179/9 179/17 180/13 180/22 181/11 182/11 184/2 184/9 184/25 186/1 187/3 187/11 199/22 200/1 201/23 205/25 206/1 206/16 207/2 208/1 213/11 215/6 215/16 219/1 219/16 219/24 Mr. Brandes [7] 222/14 223/3 223/12 230/15 230/22 238/6 239/1 Mr. Buting [27] 134/11 144/17 171/17 172/7 172/20 172/23 174/12 186/21 202/20 205/19 208/11 208/13 208/14 208/21 208/25 209/2 209/13 209/15 210/4 210/18 211/18 212/3 212/7 212/9 212/25 216/4 218/12 Mr. Buting's [1] 211/7 Mr. Colborn [6] 168/24 216/5 216/22 217/3 217/5 217/10 Mr. Fassbender [6] 63/25 134/15 202/18 209/24 210/19 215/21 Mr. Fassbender's [2] 77/13 77/22 Mr. Gahn [1] 208/19 Mr. Kratz [15] 4/14 27/20 27/21 30/23 60/4 63/12 77/12 77/25 130/6 131/16 157/12 222/11 232/5 232/16 234/15 Mr. Lenk [7] 146/9 168/23 201/22 202/15 216/4 217/6 217/11 Mr. Lenk's [1] 202/22 Mr. Strang [7] 27/7 27/18 60/9 230/16 231/10 234/22 242/5 Mr. Wiegert [3] 238/16 240/12 241/1 Mrs. [2] 86/7 110/4 Mrs. Avery [1] 86/7 Mrs. Avery's [1] 110/4 Ms [27] 5/1 5/4 16/16 17/24 20/22 23/7 24/14 24/25 25/15 28/19 61/20 92/4 107/19 110/3 171/18 177/19 209/7 213/4 213/10 213/13 213/21 214/18 214/25 215/9 215/14 215/17 235/13 multi [1] 118/6 multiple [3] 89/4 160/4 225/4 multitude [1] 118/10 murder [3] 206/7 206/8 206/9 muscle [2] 40/21 54/24 must [1] 145/8 my [49] 5/19 5/20 9/1 9/13 10/11 18/4 18/4 25/23 26/1 32/10 34/5</p>

M
my... [38] 34/7 42/5 43/1 51/25
51/25 53/12 53/15 59/12 59/19
61/13 65/24 68/2 71/23 76/3 76/7
77/18 91/22 103/25 115/1 137/9
138/13 141/15 155/20 165/20
165/22 173/24 180/9 183/15 203/9
210/25 216/14 220/12 221/5 221/7
231/16 245/12 247/9 247/13
myself [11] 10/9 42/8 69/13 94/6
94/22 95/2 111/10 132/13 157/24
184/18 212/12
mysterious [1] 217/16
mystery [1] 234/3

N
naked [1] 126/5
name [17] 4/23 4/23 4/24 28/22
46/23 63/20 63/20 67/18 95/3
202/4 202/22 222/23 222/23
234/11 235/9 235/9 238/3
names [3] 6/21 18/2 148/14
narrating [1] 108/10
narrow [1] 82/10
narrowed [1] 137/20
narrows [1] 82/14
nasty [1] 104/2
national [1] 14/6
native [2] 39/24 54/18
natural [2] 13/20 13/24
nature [2] 30/14 179/22
near [8] 25/21 31/16 92/7 94/5
107/19 114/24 151/15 223/10
necessarily [9] 35/6 38/25 43/10
50/8 79/16 80/7 81/23 87/17
121/20
necessary [4] 109/18 130/22 160/1
201/21
need [16] 6/23 7/22 17/24 21/7
21/24 29/12 29/14 31/10 55/7
81/2 129/11 130/14 135/17 150/20
151/10 245/3
needed [7] 68/20 74/15 84/1
105/13 112/16 127/7 166/24
needs [4] 41/21 54/6 73/25 132/16
negative [5] 36/4 36/16 37/1 37/6
38/1
negatives [3] 36/2 36/25 60/10
neglected [1] 85/12
neighborhood [6] 70/2 73/24
111/1 111/1 111/3 128/15
neighboring [1] 219/25
neither [5] 56/19 160/14 165/18
219/8 219/12
never [6] 6/8 37/4 49/25 69/6
195/10 222/2
Nevertheless [1] 195/20
new [2] 67/7 163/4
news [7] 136/13 136/15 138/15
242/19 243/1 243/6 243/7
newspaper [2] 242/25 243/8
next [33] 4/15 18/21 23/20 57/12
63/9 63/13 70/6 78/13 104/18
107/15 109/24 118/14 119/17
126/7 150/9 160/9 160/17 160/25
177/23 180/10 182/23 185/8 190/6
199/12 202/18 214/7 222/12
222/16 228/17 229/4 232/8 234/17
234/20
nice [2] 23/6 94/25
night [10] 22/14 25/19 26/4 91/24
101/4 106/1 112/9 177/23 179/25

180/1
nine [3] 76/13 90/9 161/1
No. [14] 8/25 12/25 16/17 24/2
25/16 94/14 124/13 150/22 188/20
215/15 229/15 239/19 241/10
244/20
No. 128 [1] 8/25
No. 129 [1] 12/25
No. 130 [1] 94/14
No. 140 [1] 229/15
No. 141 [1] 239/19
No. 151 [1] 215/15
No. 153 [1] 241/10
No. 180 [2] 150/22 244/20
No. 50 [1] 25/16
No. 86 [4] 16/17 24/2 124/13
188/20
nobody [2] 159/8 160/19
none [7] 134/6 177/18 199/16
204/12 206/20 206/21 221/12
nonetheless [1] 52/9
noon [2] 129/1 131/14
nor [2] 165/18 242/20
Norm [1] 4/9
normal [5] 42/20 75/10 79/20 89/5
143/25
normally [6] 13/25 20/1 38/6 50/3
52/20 85/5
NORMAN [1] 1/15
north [3] 114/20 116/11 190/14
northeast [2] 101/16 110/9
northeastern [1] 138/11
northern [5] 9/14 10/4 12/9 39/23
60/20
northwest [3] 24/4 101/19 116/10
note [3] 144/19 213/10 213/13
noted [1] 131/1
notes [1] 247/9
nothing [11] 10/21 49/23 62/24
130/2 148/22 172/25 188/15 199/5
209/11 217/13 218/19
noticeable [1] 37/20
notify [1] 243/19
noun [1] 50/3
November [61] 16/1 18/14 26/4
28/4 29/1 30/6 30/10 36/24 37/9
65/8 83/10 90/5 97/16 113/18
118/16 119/18 127/21 131/23
131/24 132/4 144/23 144/24
145/17 145/18 146/20 150/25
159/14 165/8 166/7 175/24 176/24
178/15 179/3 180/11 181/5 182/9
183/6 183/11 184/2 184/3 184/11
184/15 184/21 185/10 185/13
186/2 186/3 186/6 188/5 190/16
196/13 201/18 203/14 213/2
213/18 214/21 215/18 223/12
236/3 236/5 241/17
November 10th [1] 186/3
November 12th [3] 184/11 184/15
184/21
November 1st [1] 203/14
November 3 [1] 30/10
November 5 [2] 30/6 36/24
November 5th [9] 65/8 90/5
144/24 145/17 145/18 146/20
159/14 166/7 213/18
November 6 [2] 178/15 185/10
November 7th [1] 180/11
November 8th [3] 183/11 185/13
188/5
November 9th [5] 182/9 183/6
184/2 184/3 186/2

number [42] 48/8 49/6 68/25 69/4
69/7 74/10 79/24 84/9 119/14
122/23 122/23 145/8 162/21
162/22 166/24 166/25 180/15
194/18 203/22 213/10 213/13
214/2 214/5 214/8 214/19 215/1
215/2 220/21 220/24 227/22
228/15 228/18 228/20 228/20
228/21 230/11 234/3 234/4 239/4
239/6 239/10 240/24
numbers [2] 226/5 240/13
numerous [2] 10/3 106/8

O
object [8] 81/1 87/14 145/23 171/6
202/6 202/17 210/24 221/25
objected [1] 222/5
objection [22] 27/2 28/12 62/5
108/9 113/1 116/17 116/25 134/5
154/15 171/2 174/6 197/20 197/23
211/20 214/4 220/7 220/10 221/1
222/9 241/24 241/25 245/4
objective [1] 218/20
observing [1] 92/3
obtain [3] 8/10 43/6 119/14
obtained [10] 9/10 26/14 45/10
45/12 46/1 74/8 85/10 90/6
126/23 184/6
obtaining [2] 45/15 139/23
obvious [17] 70/20 87/22 93/7
97/5 99/21 102/2 116/4 116/7
121/21 122/11 123/22 169/15
169/23 170/9 171/18 173/2 181/19
obviously [8] 22/24 51/12 61/6
71/3 115/5 137/6 151/3 213/21
occasion [5] 132/11 177/13 177/16
201/21 235/21
occur [5] 81/4 107/5 112/8 125/20
229/9
occurred [4] 90/1 90/7 104/22
121/18
occurring [2] 101/4 101/5
occurs [2] 84/3 88/21
October [1] 247/15
odors [2] 46/13 47/20
off [53] 14/22 15/4 15/6 15/13
19/19 33/8 41/9 41/20 41/22
41/24 45/15 46/24 47/2 47/11
47/21 48/12 48/22 50/18 53/10
53/24 54/3 54/11 58/8 59/13 71/1
110/16 110/17 114/14 115/14
115/17 119/5 119/14 121/3 128/7
128/9 131/21 144/21 144/22
155/17 163/15 174/16 180/15
188/8 188/9 189/13 189/14 189/18
189/19 190/22 193/17 193/21
206/23 209/12
offense [1] 199/6
offer [1] 173/21
offered [4] 3/1 171/20 172/13
244/22
offhand [1] 224/11
office [6] 45/11 45/19 89/14
111/18 111/19 196/1
officer [25] 18/6 71/6 74/22 85/14
93/2 93/5 103/3 105/17 107/3
113/5 119/12 134/21 137/2 144/7
145/8 149/2 149/9 149/13 171/16
173/1 174/3 175/16 210/5 217/6
229/1
officers [54] 28/23 66/25 69/9
70/10 71/8 71/11 71/16 74/18
75/1 76/18 84/1 88/7 92/24 95/14

O
officers... [40] 95/19 102/18 102/21
102/23 103/12 103/18 103/23
113/25 114/10 117/10 120/7
126/13 133/8 133/14 143/16
152/13 155/1 160/20 164/9 165/1
166/10 166/12 175/11 175/12
175/14 176/4 176/23 178/4 178/9
178/20 178/25 179/11 180/4 180/8
185/9 203/12 205/14 212/10
217/24 224/2
official [4] 1/25 64/4 247/4 247/19
officials [2] 73/14 237/10
often [3] 6/25 88/14 170/9
oh [6] 57/17 59/25 91/6 198/17
220/4 226/7
okay [138] 13/19 30/5 30/16 31/11
31/12 32/14 36/1 39/8 42/3 42/4
42/6 42/9 45/15 46/1 46/14 46/16
46/17 46/21 46/25 48/7 55/19
58/17 59/3 59/24 60/1 77/25
111/22 113/21 134/19 135/3
135/23 136/3 136/11 136/19 137/1
137/11 137/23 138/14 138/21
138/25 139/9 139/25 140/9 141/6
142/9 142/12 142/14 142/23 143/1
143/4 145/4 145/10 145/13 145/19
147/8 147/23 148/2 148/8 148/17
148/25 149/17 150/4 150/5 150/24
151/2 151/9 151/10 152/3 152/12
154/10 155/7 155/11 155/16 156/7
157/12 158/1 158/17 159/3 160/6
160/16 160/25 161/9 162/11
162/19 163/8 177/21 179/20 182/4
183/11 183/23 184/6 185/4 185/21
188/17 189/14 189/20 189/25
190/9 191/13 191/20 192/1 192/5
192/11 192/18 193/22 194/6
194/15 195/19 198/3 199/9 200/6
201/5 203/11 203/20 203/25 204/8
205/18 205/21 207/20 211/10
211/15 213/9 218/23 220/3 221/11
224/12 229/6 229/14 231/5 231/19
232/3 232/11 233/12 234/2 234/12
237/2 237/20 242/9
old [7] 9/3 9/8 9/11 40/4 48/10
134/24 230/20
olfactory [2] 39/11 39/15
once [5] 111/9 131/5 172/12
189/25 210/21
ones [4] 80/23 94/7 135/7 139/19
ongoing [4] 72/23 101/9 128/16
183/17
only [25] 11/21 11/22 12/14 47/5
47/9 47/19 53/8 53/8 54/4 57/7
86/3 87/4 89/24 98/20 103/21
111/12 130/25 162/16 169/20
174/9 192/3 196/22 199/19 200/3
244/25
onto [1] 100/16
open [9] 21/11 33/17 105/13
173/24 183/1 225/5 225/6 228/15
230/12
opened [5] 118/12 171/23 182/24
230/13 246/4
opener [6] 127/9 182/12 182/14
182/16 183/19 184/5
opening [3] 110/13 172/17 194/11
operating [1] 89/19
operator [3] 96/21 100/24 101/1
opinion [1] 26/25
opportunity [3] 26/23 26/24

120/25
opposed [3] 15/21 44/8 72/25
opposite [1] 55/10
or [359]
order [3] 84/21 141/16 143/23
ordered [1] 243/4
ordinarily [1] 48/23
ordinary [1] 41/13
organization [5] 5/22 5/23 6/2
16/1 223/24
organized [1] 74/17
organized [2] 75/1 101/25
orientated [1] 25/24
original [2] 201/17 216/21
originally [1] 60/12
Orth [1] 153/20
other [118] 8/12 11/5 12/1 12/2
15/22 18/15 20/24 21/7 21/23
21/24 22/10 23/16 29/19 29/21
32/22 32/23 33/10 33/23 34/17
34/20 36/18 38/18 41/5 41/16
43/14 45/24 49/16 56/2 58/7
58/15 64/19 65/5 66/25 67/1
67/16 68/21 68/21 69/15 71/5
73/10 74/22 75/12 75/24 78/17
81/4 85/25 86/2 86/14 86/17 87/2
92/24 95/19 102/19 105/12 105/16
106/21 109/19 110/17 111/12
111/13 115/6 117/25 119/22 120/4
121/1 123/3 123/3 123/5 125/17
125/19 126/2 126/9 128/5 130/7
130/13 135/6 159/25 161/15
161/17 162/11 162/11 167/18
167/23 168/1 168/1 168/20 168/21
169/11 171/20 171/25 172/6
173/12 173/16 173/17 174/4
174/21 179/22 181/15 184/18
187/7 187/8 187/8 187/16 187/25
191/23 194/16 212/10 214/24
217/25 223/18 228/2 233/21
235/22 235/24 236/17 241/16
242/21 245/14
others [2] 173/7 187/19
otherwise [6] 28/10 117/11 160/12
173/9 205/11 211/2
our [35] 5/23 6/22 7/17 8/8 9/2
9/14 12/3 12/3 16/23 16/24 45/12
65/16 75/16 76/23 76/25 82/10
82/10 86/10 93/12 93/21 121/3
121/8 122/3 122/19 128/24 129/1
130/2 130/8 149/19 160/22 169/13
172/16 186/16 198/22 208/15
ours [1] 188/23
ourselves [1] 18/15
outbuildings [2] 75/25 110/9
outdoor [1] 88/24
outline [2] 73/20 104/21
outside [14] 8/19 24/14 24/17
95/23 96/3 104/4 107/18 116/1
129/7 133/1 135/10 171/5 207/6
207/18
outsider [1] 157/22
over [54] 7/12 7/12 11/13 20/7
26/1 31/19 31/22 42/10 42/23
49/3 52/1 53/9 58/7 65/4 68/3
72/19 77/19 91/12 91/13 96/22
114/4 114/19 127/18 129/3 130/5
131/6 132/2 135/7 137/25 140/20
153/8 154/6 155/17 161/16 162/12
170/4 176/5 189/10 189/12 191/6
193/1 194/6 195/1 198/15 211/11
219/25 225/3 225/4 229/1 229/2
229/17 233/20 233/21 237/19

overall [4] 73/17 73/17 73/21
203/18
overrule [1] 174/6
overview [1] 120/6
own [6] 108/10 183/1 197/19
209/2 218/24 245/12
owned [1] 228/8
P
P-a-i-n-e [1] 235/10
p.m [22] 66/2 66/3 93/1 95/12
104/9 141/23 143/2 145/14 145/16
153/21 153/23 157/6 157/8 157/13
159/14 175/24 176/2 179/2 179/3
181/7 201/7 211/12
package [1] 46/7
packaged [1] 122/18
page [2] 2/2 144/19
paged [1] 16/9
Page [6] 65/14 66/11 139/18
140/7 140/10 158/2
PAINE [8] 2/19 234/10 234/17
235/5 235/10 235/13 236/2 238/2
pair [2] 183/19 238/17
paired [2] 223/21 223/22
panel [2] 97/22 98/5
paper [1] 12/25
paragraph [1] 151/6
parcel [1] 164/23
parked [6] 94/16 149/25 150/4
151/8 151/23 152/1
part [18] 7/21 11/1 39/22 47/20
76/4 116/15 121/4 149/14 155/18
159/3 172/10 175/23 190/21
190/21 218/1 237/5 238/1 239/21
partially [1] 31/22
participate [4] 66/4 66/21 223/13
236/6
particular [11] 23/21 31/14 142/14
147/6 173/15 196/19 197/11
198/20 212/21 212/22 236/22
particularly [4] 34/22 49/2 135/7
194/10
parties [3] 4/4 27/9 77/6
partner [6] 9/13 29/17 32/22 32/24
34/1 59/12
partners [3] 29/22 29/24 32/23
parts [1] 44/2
pass [5] 7/19 13/5 13/21 38/6 38/7
passed [3] 12/10 13/12 38/12
passenger [10] 31/25 97/21 98/14
99/4 99/6 100/1 100/7 227/17
227/19 229/17
passion [1] 58/17
past [5] 9/2 28/3 143/23 144/11
196/13
path [1] 50/25
pathologist [3] 82/1 82/2 163/16
paths [1] 174/4
patio [1] 213/14
Patrick [1] 1/9
patrol [7] 123/12 123/13 129/25
135/2 235/14 235/15 235/16
patrons [1] 243/16
patterns [3] 112/15 170/9 179/25
pavement [1] 89/22
paw [1] 20/8
pawed [1] 21/16
peeled [1] 228/14
peered [1] 227/16
pending [1] 95/23
people [50] 7/4 14/10 14/19 39/13
45/24 52/6 71/4 71/15 75/12

P		
<p>people... [41] 79/24 88/13 89/4 94/5 94/24 103/8 103/10 103/18 103/21 103/22 104/10 104/11 104/11 127/15 128/18 135/12 137/10 141/14 144/20 144/21 148/15 167/19 167/23 168/21 170/12 171/25 174/18 198/14 198/18 200/7 211/24 212/4 224/5 225/4 229/10 231/8 236/17 236/19 237/17 237/22 237/23</p>	<p>192/12 210/14 211/16 211/18 211/23 212/1 212/9 229/14 pictures [3] 97/10 151/19 191/13 piece [12] 12/25 20/6 20/20 53/13 81/20 81/20 93/13 97/24 152/18 153/9 154/11 154/21 pieces [4] 94/19 124/12 136/18 204/16 pig [4] 43/23 44/2 44/3 44/8 pigs [1] 44/5 pile [1] 124/18 piles [1] 14/10 pilots [1] 67/24 pinched [1] 228/3 pinpoint [1] 19/9 pits [1] 119/9 place [23] 56/6 84/9 84/23 87/22 91/11 91/13 105/2 108/18 113/3 155/4 158/25 162/12 162/16 169/15 169/23 169/25 170/2 175/7 190/14 197/18 198/16 209/7 224/17 placed [4] 14/23 19/14 97/14 192/2 places [9] 32/6 79/17 84/7 84/9 105/13 109/3 109/12 109/14 243/14 placing [1] 20/8 PLAINTIFF [1] 1/4 plan [15] 73/13 73/17 73/18 73/21 74/5 74/6 74/7 78/6 79/15 79/18 158/7 162/23 163/1 163/2 163/10 plant [3] 47/15 149/2 149/13 planting [1] 149/8 plate [22] 228/21 230/11 234/3 234/4 236/25 238/10 238/11 238/21 238/25 239/4 239/6 239/14 239/20 240/5 240/23 241/7 241/8 241/9 241/11 241/13 241/13 241/14 plates [27] 99/11 99/14 123/25 124/1 124/2 224/21 226/13 227/20 227/24 228/4 228/14 228/24 229/3 229/6 229/22 230/3 230/6 232/22 233/15 233/19 238/13 239/2 239/9 239/10 240/9 241/12 241/21 please [37] 4/5 4/18 4/22 4/22 5/7 13/1 20/16 23/17 25/5 33/17 37/13 38/2 63/19 63/19 66/9 93/25 94/15 113/20 144/15 145/5 162/5 188/21 189/24 200/13 213/24 222/18 222/22 222/22 223/4 226/11 227/11 235/4 235/8 235/8 238/8 239/13 241/2 plot [1] 40/8 plus [4] 54/4 76/16 89/3 158/15 plywood [5] 20/7 20/21 94/20 98/16 100/3 point [40] 25/4 31/6 32/8 42/12 42/18 53/21 54/7 54/21 58/5 61/13 78/15 87/19 94/24 95/18 96/20 99/19 117/6 120/7 121/18 129/22 137/3 146/9 152/16 152/18 155/24 158/1 162/7 173/20 173/22 173/25 174/2 174/7 174/9 185/25 188/4 190/6 191/3 195/23 210/5 219/7 pointed [4] 196/16 238/9 238/12 239/15 pointer [6] 25/4 99/19 117/6 226/21 230/4 230/25 police [16] 67/5 67/5 67/6 71/11 106/3 106/3 110/23 114/1 114/2</p>	<p>129/15 136/1 143/7 149/9 149/12 196/7 203/21 politely [2] 43/4 243/19 pond [10] 23/22 23/23 31/1 32/19 91/25 150/13 190/14 191/24 192/15 192/20 ponds [3] 107/4 119/7 119/8 pool [2] 53/13 54/10 porch [2] 207/6 207/7 pork [1] 44/8 portion [3] 57/5 98/24 99/8 posed [1] 173/19 position [3] 190/25 191/22 212/18 positive [12] 35/21 35/25 37/16 38/1 38/15 38/18 38/23 60/13 61/1 61/11 113/12 177/20 positives [5] 35/19 37/9 37/11 37/21 60/9 possession [4] 122/20 208/15 208/16 212/4 possibilities [1] 146/23 possibility [4] 136/25 147/12 149/1 169/11 possible [9] 26/11 40/5 80/1 132/23 158/23 170/23 177/2 198/24 232/6 possibly [5] 114/10 135/14 175/5 192/9 220/16 post [10] 89/18 95/15 97/23 98/15 98/25 99/7 139/12 141/24 153/2 196/1 potential [3] 112/16 121/2 188/6 potentially [1] 163/23 practical [1] 132/15 practice [2] 143/7 158/16 pre [1] 172/14 pre-trial [1] 172/14 precisely [1] 102/5 predicted [1] 91/9 predicting [1] 91/8 prefer [2] 52/14 52/15 preferably [1] 102/14 preliminary [1] 118/17 premium [1] 103/15 prepare [2] 28/24 112/3 prepared [8] 29/1 111/25 112/1 112/2 130/16 150/24 158/21 247/8 presence [5] 105/16 113/12 126/2 129/7 171/5 present [20] 75/2 77/4 77/24 100/20 123/13 129/5 131/15 132/2 156/19 156/20 156/21 156/22 171/10 174/11 181/20 186/19 196/18 199/25 208/17 244/6 presented [2] 70/11 70/12 preservation [1] 71/14 preserved [1] 122/18 preserving [1] 103/20 press [1] 141/14 presumably [1] 52/1 pretty [5] 118/19 127/1 135/3 136/20 170/1 previous [6] 106/11 112/13 172/19 203/8 211/16 245/19 previously [3] 78/5 104/1 242/16 pried [1] 225/6 primarily [2] 34/18 161/8 primary [10] 64/18 71/21 71/24 78/25 83/22 84/9 90/18 120/21 121/5 126/19 printer [1] 230/24 prints [3] 196/23 208/22 209/12 prior [6] 13/4 26/13 28/4 92/14</p>

<p>P</p> <p>prior... [2] 136/5 173/23</p> <p>prison [2] 138/4 219/1</p> <p>private [1] 84/13</p> <p>probable [1] 85/13</p> <p>probably [30] 5/3 32/8 35/2 55/6 55/6 61/23 65/23 66/1 68/22 78/15 78/23 93/12 95/16 96/12 118/7 119/12 135/24 144/13 150/7 150/12 155/23 158/4 177/20 191/15 200/11 201/3 204/2 225/9 231/8 233/18</p> <p>probative [1] 221/8</p> <p>problem [2] 131/7 136/4</p> <p>problems [2] 8/19 217/20</p> <p>procedure [3] 7/16 160/23 200/8</p> <p>proceed [3] 14/1 17/16 21/13</p> <p>proceeded [1] 24/17</p> <p>proceeding [2] 57/12 83/9</p> <p>proceedings [3] 1/23 246/12 247/13</p> <p>process [16] 9/18 41/10 41/13 50/24 50/25 79/1 79/7 79/10 95/20 96/1 96/2 109/17 117/11 124/23 125/12 132/22</p> <p>processed [3] 101/6 112/17 122/23</p> <p>processing [15] 70/22 71/14 79/6 84/3 102/17 103/19 103/25 105/25 106/6 113/11 117/18 118/18 126/20 126/22 148/12</p> <p>produced [1] 44/16</p> <p>product [2] 44/18 44/21</p> <p>professional [1] 103/12</p> <p>profile [3] 136/21 137/8 141/7</p> <p>profusely [1] 48/20</p> <p>progressed [1] 37/17</p> <p>progresses [1] 113/19</p> <p>prohibit [1] 173/13</p> <p>prohibited [1] 243/20</p> <p>promise [1] 245/22</p> <p>pronounce [1] 178/7</p> <p>proper [1] 108/17</p> <p>properly [1] 41/3</p> <p>properties [3] 66/1 158/10 188/9</p> <p>property [75] 24/4 30/21 55/11 58/8 66/19 74/16 74/20 74/24 75/8 75/9 75/21 76/15 76/16 78/25 79/2 84/24 85/14 85/20 86/2 86/3 89/1 92/12 101/17 105/3 107/12 107/13 107/15 107/18 107/19 110/10 110/17 115/19 116/3 116/10 117/24 118/1 119/8 121/3 127/14 127/17 133/2 133/19 137/25 139/13 141/23 149/24 152/19 156/19 157/4 161/16 161/22 162/17 163/6 164/22 168/2 168/5 168/21 182/21 184/22 186/7 187/18 194/25 195/1 195/9 195/21 196/11 196/20 200/23 225/24 226/25 227/1 227/3 230/21 231/3 236/7</p> <p>proposed [1] 173/16</p> <p>prosecution [3] 129/13 129/13 208/21</p> <p>Prosecutor [3] 1/11 1/13 1/15</p> <p>prosecutors [2] 4/10 156/22</p> <p>prospective [1] 221/13</p> <p>protect [2] 88/17 194/2</p> <p>protecting [1] 155/2</p> <p>protection [1] 160/22</p> <p>protective [1] 228/6</p> <p>prove [4] 44/13 73/8 171/21</p>	<p>198/21</p> <p>provided [1] 221/20</p> <p>proving [3] 34/13 43/17 45/6</p> <p>pseudo [3] 44/14 44/20 44/23</p> <p>public [2] 141/7 149/7</p> <p>publicity [1] 136/17</p> <p>published [1] 193/9</p> <p>pull [3] 5/2 61/7 152/9</p> <p>pulled [1] 152/6</p> <p>purpose [6] 43/18 64/18 78/25 105/23 113/8 194/1</p> <p>purposes [2] 26/14 121/5</p> <p>pushing [1] 25/12</p> <p>put [34] 19/12 21/20 22/2 30/23 52/2 77/18 79/6 88/8 88/17 95/24 97/3 102/7 149/19 162/23 163/2 164/14 167/22 175/10 175/12 176/9 179/14 188/20 189/7 189/10 189/12 189/20 190/12 191/6 203/3 205/23 209/22 211/11 229/14 238/16</p> <p>putting [2] 148/9 165/9</p>	<p>94/4 94/16 96/22 96/23 97/12 97/24 98/4 98/13 98/24 99/1 99/4 99/5 100/2 100/8 100/16 104/16 112/25 122/24 122/25 123/2 123/3 147/10 149/23 151/24 152/7 152/17 161/25 182/16 188/18 189/3 189/11 190/2 190/6 190/15 191/3 192/13 192/23 193/4</p> <p>re [1] 184/22</p> <p>re-released [1] 184/22</p> <p>reached [1] 25/10</p> <p>reaches [1] 38/5</p> <p>read [6] 145/5 151/5 228/22 242/14 242/25 243/8</p> <p>reading [1] 242/19</p> <p>real [3] 67/11 80/12 225/7</p> <p>realize [1] 135/24</p> <p>really [18] 10/20 22/17 23/2 31/15 40/17 43/16 59/10 59/14 72/20 88/23 91/15 95/22 104/2 144/5 163/10 171/2 197/15 219/4</p> <p>rear [8] 31/25 32/4 98/5 98/24 99/5 99/5 99/10 241/9</p> <p>reason [12] 38/7 41/9 42/2 47/25 66/17 83/23 108/24 112/11 123/18 140/18 154/9 168/9</p> <p>reasonable [2] 38/9 172/1</p> <p>reasons [6] 23/1 87/18 132/17 169/17 173/16 242/23</p> <p>recall [32] 20/5 23/12 67/18 92/6 104/19 120/22 125/16 125/21 133/24 139/21 142/1 148/1 154/3 154/4 154/4 169/19 175/13 183/10 183/25 191/19 201/15 205/16 213/17 215/4 215/17 220/12 225/13 229/7 234/4 236/16 238/2 238/5</p> <p>receive [3] 111/11 118/16 118/24</p> <p>received [17] 16/17 25/16 61/2 65/9 65/23 71/12 111/24 113/12 118/20 129/19 130/1 130/8 132/5 215/9 215/17 216/23 242/2</p> <p>receiving [1] 119/21</p> <p>recertified [1] 8/15</p> <p>recess [3] 77/23 131/14 186/20</p> <p>recognize [10] 24/3 25/17 46/7 55/14 82/20 94/12 147/20 226/14 227/7 230/25</p> <p>recollected [1] 31/18</p> <p>recollection [19] 25/23 29/11 32/9 32/10 148/2 148/4 148/5 151/7 151/12 157/2 159/17 165/20 180/18 181/8 183/15 195/13 204/24 244/21 245/6</p> <p>recommended [1] 133/15</p> <p>reconsider [1] 174/8</p> <p>record [19] 4/5 4/23 9/21 9/23 10/4 12/15 63/20 77/5 129/11 133/8 143/10 150/20 153/12 193/21 214/2 214/13 222/23 235/9 244/18</p> <p>records [8] 128/9 128/9 128/10 128/11 128/12 130/13 130/21 220/23</p> <p>recount [1] 66/8</p> <p>recover [2] 15/2 203/22</p> <p>recovered [1] 107/18</p> <p>recovery [1] 34/3</p> <p>recross [5] 2/7 2/13 62/1 218/12 218/14</p> <p>Recross-Examination [4] 2/7 2/13 62/1 218/14</p> <p>recycling [1] 9/12</p>
<p>process [16] 9/18 41/10 41/13 50/24 50/25 79/1 79/7 79/10 95/20 96/1 96/2 109/17 117/11 124/23 125/12 132/22</p> <p>processed [3] 101/6 112/17 122/23</p> <p>processing [15] 70/22 71/14 79/6 84/3 102/17 103/19 103/25 105/25 106/6 113/11 117/18 118/18 126/20 126/22 148/12</p> <p>produced [1] 44/16</p> <p>product [2] 44/18 44/21</p> <p>professional [1] 103/12</p> <p>profile [3] 136/21 137/8 141/7</p> <p>profusely [1] 48/20</p> <p>progressed [1] 37/17</p> <p>progresses [1] 113/19</p> <p>prohibit [1] 173/13</p> <p>prohibited [1] 243/20</p> <p>promise [1] 245/22</p> <p>pronounce [1] 178/7</p> <p>proper [1] 108/17</p> <p>properly [1] 41/3</p> <p>properties [3] 66/1 158/10 188/9</p> <p>property [75] 24/4 30/21 55/11 58/8 66/19 74/16 74/20 74/24 75/8 75/9 75/21 76/15 76/16 78/25 79/2 84/24 85/14 85/20 86/2 86/3 89/1 92/12 101/17 105/3 107/12 107/13 107/15 107/18 107/19 110/10 110/17 115/19 116/3 116/10 117/24 118/1 119/8 121/3 127/14 127/17 133/2 133/19 137/25 139/13 141/23 149/24 152/19 156/19 157/4 161/16 161/22 162/17 163/6 164/22 168/2 168/5 168/21 182/21 184/22 186/7 187/18 194/25 195/1 195/9 195/21 196/11 196/20 200/23 225/24 226/25 227/1 227/3 230/21 231/3 236/7</p> <p>proposed [1] 173/16</p> <p>prosecution [3] 129/13 129/13 208/21</p> <p>Prosecutor [3] 1/11 1/13 1/15</p> <p>prosecutors [2] 4/10 156/22</p> <p>prospective [1] 221/13</p> <p>protect [2] 88/17 194/2</p> <p>protecting [1] 155/2</p> <p>protection [1] 160/22</p> <p>protective [1] 228/6</p> <p>prove [4] 44/13 73/8 171/21</p>	<p>Q</p> <p>qualified [3] 7/20 12/13 168/16</p> <p>quantity [3] 46/3 53/16 54/23</p> <p>quarries [1] 119/9</p> <p>quarter [3] 97/22 97/22 98/5</p> <p>question [37] 23/7 26/8 68/2 71/23 76/3 81/9 81/13 81/16 108/13 108/18 115/13 118/23 125/1 146/7 146/11 146/17 146/18 167/7 202/12 202/14 202/21 210/7 210/25 211/5 213/1 213/5 216/7 216/9 219/5 221/2 221/4 221/5 222/1 222/5 222/5 222/7 245/12</p> <p>questioning [5] 78/1 171/6 172/3 174/1 211/7</p> <p>questions [12] 27/19 28/10 61/24 62/10 81/7 93/1 111/4 115/14 173/19 220/12 242/8 244/11</p> <p>quick [3] 159/21 160/11 184/20</p> <p>quickly [7] 19/2 121/24 132/22 161/7 182/9 193/18 203/3</p> <p>quit [1] 177/22</p> <p>quite [8] 132/8 136/17 152/4 195/4 204/2 224/11 225/14 228/15</p>	<p>reason [12] 38/7 41/9 42/2 47/25 66/17 83/23 108/24 112/11 123/18 140/18 154/9 168/9</p> <p>reasonable [2] 38/9 172/1</p> <p>reasons [6] 23/1 87/18 132/17 169/17 173/16 242/23</p> <p>recall [32] 20/5 23/12 67/18 92/6 104/19 120/22 125/16 125/21 133/24 139/21 142/1 148/1 154/3 154/4 154/4 169/19 175/13 183/10 183/25 191/19 201/15 205/16 213/17 215/4 215/17 220/12 225/13 229/7 234/4 236/16 238/2 238/5</p> <p>receive [3] 111/11 118/16 118/24</p> <p>received [17] 16/17 25/16 61/2 65/9 65/23 71/12 111/24 113/12 118/20 129/19 130/1 130/8 132/5 215/9 215/17 216/23 242/2</p> <p>receiving [1] 119/21</p> <p>recertified [1] 8/15</p> <p>recess [3] 77/23 131/14 186/20</p> <p>recognize [10] 24/3 25/17 46/7 55/14 82/20 94/12 147/20 226/14 227/7 230/25</p> <p>recollected [1] 31/18</p> <p>recollection [19] 25/23 29/11 32/9 32/10 148/2 148/4 148/5 151/7 151/12 157/2 159/17 165/20 180/18 181/8 183/15 195/13 204/24 244/21 245/6</p> <p>recommended [1] 133/15</p> <p>reconsider [1] 174/8</p> <p>record [19] 4/5 4/23 9/21 9/23 10/4 12/15 63/20 77/5 129/11 133/8 143/10 150/20 153/12 193/21 214/2 214/13 222/23 235/9 244/18</p> <p>records [8] 128/9 128/9 128/10 128/11 128/12 130/13 130/21 220/23</p> <p>recount [1] 66/8</p> <p>recover [2] 15/2 203/22</p> <p>recovered [1] 107/18</p> <p>recovery [1] 34/3</p> <p>recross [5] 2/7 2/13 62/1 218/12 218/14</p> <p>Recross-Examination [4] 2/7 2/13 62/1 218/14</p> <p>recycling [1] 9/12</p>
<p>process [16] 9/18 41/10 41/13 50/24 50/25 79/1 79/7 79/10 95/20 96/1 96/2 109/17 117/11 124/23 125/12 132/22</p> <p>processed [3] 101/6 112/17 122/23</p> <p>processing [15] 70/22 71/14 79/6 84/3 102/17 103/19 103/25 105/25 106/6 113/11 117/18 118/18 126/20 126/22 148/12</p> <p>produced [1] 44/16</p> <p>product [2] 44/18 44/21</p> <p>professional [1] 103/12</p> <p>profile [3] 136/21 137/8 141/7</p> <p>profusely [1] 48/20</p> <p>progressed [1] 37/17</p> <p>progresses [1] 113/19</p> <p>prohibit [1] 173/13</p> <p>prohibited [1] 243/20</p> <p>promise [1] 245/22</p> <p>pronounce [1] 178/7</p> <p>proper [1] 108/17</p> <p>properly [1] 41/3</p> <p>properties [3] 66/1 158/10 188/9</p> <p>property [75] 24/4 30/21 55/11 58/8 66/19 74/16 74/20 74/24 75/8 75/9 75/21 76/15 76/16 78/25 79/2 84/24 85/14 85/20 86/2 86/3 89/1 92/12 101/17 105/3 107/12 107/13 107/15 107/18 107/19 110/10 110/17 115/19 116/3 116/10 117/24 118/1 119/8 121/3 127/14 127/17 133/2 133/19 137/25 139/13 141/23 149/24 152/19 156/19 157/4 161/16 161/22 162/17 163/6 164/22 168/2 168/5 168/21 182/21 184/22 186/7 187/18 194/25 195/1 195/9 195/21 196/11 196/20 200/23 225/24 226/25 227/1 227/3 230/21 231/3 236/7</p> <p>proposed [1] 173/16</p> <p>prosecution [3] 129/13 129/13 208/21</p> <p>Prosecutor [3] 1/11 1/13 1/15</p> <p>prosecutors [2] 4/10 156/22</p> <p>prospective [1] 221/13</p> <p>protect [2] 88/17 194/2</p> <p>protecting [1] 155/2</p> <p>protection [1] 160/22</p> <p>protective [1] 228/6</p> <p>prove [4] 44/13 73/8 171/21</p>	<p>R</p> <p>Rabas [1] 96/14</p> <p>rabbits [1] 198/19</p> <p>radio [3] 85/17 243/2 243/7</p> <p>rain [8] 22/24 91/9 91/15 91/25 96/13 97/18 105/1 189/2</p> <p>raining [3] 23/3 91/21 194/3</p> <p>rainy [1] 22/18</p> <p>raise [5] 4/18 172/18 173/22 222/18 235/4</p> <p>raised [1] 172/21</p> <p>ramp [1] 100/25</p> <p>ran [5] 19/21 25/12 25/13 57/10 183/16</p> <p>random [2] 108/13 108/15</p> <p>range [1] 59/1</p> <p>ranges [1] 19/20</p> <p>rank [2] 12/18 143/18</p> <p>rarely [3] 33/13 37/4 37/5</p> <p>rate [11] 36/25 37/1 37/6 37/9 37/16 37/21 38/15 38/18 141/16 175/6 204/25</p> <p>rather [9] 14/5 72/22 81/3 96/2 129/25 173/14 174/2 177/10 221/9</p> <p>RAV [42] 79/1 91/12 92/16 93/3</p>	<p>reason [12] 38/7 41/9 42/2 47/25 66/17 83/23 108/24 112/11 123/18 140/18 154/9 168/9</p> <p>reasonable [2] 38/9 172/1</p> <p>reasons [6] 23/1 87/18 132/17 169/17 173/16 242/23</p> <p>recall [32] 20/5 23/12 67/18 92/6 104/19 120/22 125/16 125/21 133/24 139/21 142/1 148/1 154/3 154/4 154/4 169/19 175/13 183/10 183/25 191/19 201/15 205/16 213/17 215/4 215/17 220/12 225/13 229/7 234/4 236/16 238/2 238/5</p> <p>receive [3] 111/11 118/16 118/24</p> <p>received [17] 16/17 25/16 61/2 65/9 65/23 71/12 111/24 113/12 118/20 129/19 130/1 130/8 132/5 215/9 215/17 216/23 242/2</p> <p>receiving [1] 119/21</p> <p>recertified [1] 8/15</p> <p>recess [3] 77/23 131/14 186/20</p> <p>recognize [10] 24/3 25/17 46/7 55/14 82/20 94/12 147/20 226/14 227/7 230/25</p> <p>recollected [1] 31/18</p> <p>recollection [19] 25/23 29/11 32/9 32/10 148/2 148/4 148/5 151/7 151/12 157/2 159/17 165/20 180/18 181/8 183/15 195/13 204/24 244/21 245/6</p> <p>recommended [1] 133/15</p> <p>reconsider [1] 174/8</p> <p>record [19] 4/5 4/23 9/21 9/23 10/4 12/15 63/20 77/5 129/11 133/8 143/10 150/20 153/12 193/21 214/2 214/13 222/23 235/9 244/18</p> <p>records [8] 128/9 128/9 128/10 128/11 128/12 130/13 130/21 220/23</p> <p>recount [1] 66/8</p> <p>recover [2] 15/2 203/22</p> <p>recovered [1] 107/18</p> <p>recovery [1] 34/3</p> <p>recross [5] 2/7 2/13 62/1 218/12 218/14</p> <p>Recross-Examination [4] 2/7 2/13 62/1 218/14</p> <p>recycling [1] 9/12</p>

R	<p> red [3] 94/22 189/17 190/7 redeployed [1] 22/10 redirect [14] 2/6 2/12 2/14 60/4 60/7 62/6 62/9 146/15 167/4 208/5 208/8 218/10 221/18 222/10 reenter [1] 107/1 refer [5] 6/10 37/2 99/9 116/23 226/19 referring [2] 18/2 229/25 reflect [1] 77/14 reflection [1] 60/14 refresh [3] 151/11 204/23 245/6 refreshed [1] 244/21 refreshes [3] 151/7 157/2 195/13 refreshing [1] 29/10 regard [1] 39/8 regarding [6] 66/5 118/17 129/16 130/12 130/24 218/24 regardless [1] 55/2 registration [1] 240/24 regular [1] 145/10 reinforced [1] 34/2 reinforcement [1] 35/8 relate [1] 146/8 related [5] 11/10 138/17 167/2 173/16 175/1 relates [1] 81/13 relating [1] 173/14 relation [1] 175/1 release [1] 47/16 released [4] 46/8 117/14 184/22 186/7 relevance [2] 49/11 211/3 reliability [3] 8/14 22/20 44/12 reliable [2] 45/5 129/20 reliably [1] 8/20 remain [15] 6/20 11/23 12/2 12/5 12/12 13/7 13/13 14/8 15/3 20/13 22/6 26/11 41/20 46/3 73/25 remainder [1] 19/15 remained [2] 109/8 236/14 remaining [1] 97/4 remains [53] 7/6 8/1 9/5 9/24 10/6 10/7 10/10 11/2 11/4 12/22 13/10 14/13 15/16 15/18 15/20 16/13 17/10 17/11 17/19 26/5 26/10 26/14 26/16 26/20 26/23 27/23 28/1 28/5 39/20 39/21 40/3 40/10 40/18 40/20 43/8 43/22 44/1 44/9 45/6 45/7 45/16 47/25 48/24 49/22 50/2 51/5 51/10 51/12 51/23 52/10 52/14 161/2 161/3 remember [33] 22/13 28/22 91/4 104/8 119/18 140/6 150/11 156/3 156/23 156/24 166/5 186/4 187/5 191/16 208/17 208/19 208/21 208/24 210/6 211/7 213/5 213/7 213/9 216/1 216/7 216/9 220/16 225/17 234/2 236/19 237/6 237/9 237/18 Remiker [7] 145/7 148/16 159/19 175/19 178/3 179/1 213/3 remind [2] 77/1 129/2 Remington [1] 187/16 remove [2] 42/25 243/9 removed [1] 190/3 removing [2] 59/19 91/16 rendered [1] 52/2 reoffer [1] 172/12 repeat [2] 31/10 167/7 repeated [1] 228/18 </p>	<p> repeatedly [1] 206/17 rephrase [4] 154/18 202/21 211/4 211/22 replace [1] 214/5 report [21] 18/2 28/24 28/24 29/1 61/23 62/8 70/2 77/9 77/18 118/17 138/19 150/16 150/22 150/22 150/24 151/1 170/18 174/24 244/2 244/19 244/20 reported [3] 1/24 73/1 247/6 reporter [4] 1/25 27/14 247/5 247/19 reporting [1] 175/1 reports [4] 150/21 243/1 243/1 243/25 request [7] 5/25 77/6 93/18 93/19 93/19 111/22 129/12 requested [3] 16/12 77/6 158/3 requests [3] 6/8 132/5 132/8 require [2] 8/11 171/4 required [1] 168/22 requires [1] 131/11 rescue [10] 5/10 5/11 5/15 5/23 6/1 6/16 12/4 50/7 58/11 67/21 resided [1] 168/21 residence [57] 65/24 82/24 101/3 101/9 101/10 101/11 101/21 102/8 104/7 106/12 107/8 107/15 107/23 108/1 110/5 110/8 112/11 116/11 118/9 120/8 124/9 160/7 161/19 162/1 162/7 166/11 166/23 167/13 167/20 169/2 169/6 175/8 175/24 176/5 177/8 178/21 179/2 179/6 179/17 180/13 180/22 181/11 182/11 182/21 183/24 184/2 184/9 187/3 187/11 187/12 187/14 200/17 201/23 205/25 215/6 219/16 220/22 residences [15] 75/5 75/21 76/12 79/5 82/22 82/23 109/19 111/3 120/2 120/4 132/7 176/22 177/10 187/8 187/9 residents [1] 127/1 resource [1] 103/14 resources [11] 68/6 68/12 68/18 69/8 70/8 70/10 87/1 121/4 135/17 167/18 173/5 respect [2] 146/10 173/19 respond [5] 5/24 6/8 16/4 21/21 65/19 responded [3] 8/6 16/25 30/14 responding [1] 30/5 response [4] 14/6 108/12 113/6 129/14 responsibilities [3] 109/11 216/7 224/12 responsibility [4] 68/12 111/8 153/8 153/24 responsible [1] 44/1 rest [4] 72/9 83/15 90/17 91/24 result [2] 91/10 112/15 resulted [1] 218/25 results [1] 27/4 resume [9] 77/3 77/21 78/1 129/2 129/8 131/17 174/13 186/17 186/21 retired [1] 112/9 retrieve [2] 132/6 178/22 return [1] 85/6 returned [7] 19/5 23/25 58/6 85/3 131/24 157/3 157/16 returns [1] 20/2 revisit [2] 172/5 172/22 </p>	<p> revive [1] 42/11 reward [2] 35/4 35/6 ridge [3] 17/22 18/19 31/1 ridgeway [1] 18/20 rifle [4] 187/11 198/13 199/3 203/23 rifles [3] 106/23 187/17 198/18 right [364] rightly [1] 52/13 rim [1] 116/15 ring [1] 183/9 ripe [1] 130/18 ripping [1] 114/14 river [1] 61/7 Rivers [2] 67/5 114/1 road [14] 58/9 82/25 89/20 89/21 101/10 142/18 200/15 200/21 214/23 217/7 226/24 232/20 232/20 245/16 roadblock [1] 16/11 roadside [2] 127/11 185/20 roadway [2] 17/2 233/10 rode [1] 229/10 role [3] 66/14 68/10 68/14 roof [1] 114/14 room [2] 178/10 194/9 roommate [3] 170/16 170/18 174/19 rotating [1] 106/24 rough [1] 30/1 roughly [2] 37/20 224/7 route [1] 31/9 routine [1] 160/23 roving [1] 109/13 row [2] 31/17 92/12 rows [1] 23/24 RPR [2] 1/24 247/19 rubble [1] 14/10 ruined [1] 48/14 ruling [3] 172/19 173/23 174/9 rulings [1] 171/4 run [2] 64/7 184/20 running [3] 48/11 86/13 232/13 rush [1] 168/9 rushed [1] 181/24 RV [1] 89/13 </p>
		S	
		<p> safe [2] 75/14 75/17 safer [1] 95/22 safes [2] 118/11 118/11 safety [3] 74/22 74/25 75/11 said [46] 9/7 14/16 20/1 20/16 21/18 22/1 23/15 40/17 45/13 54/22 79/20 85/7 85/19 87/7 90/8 109/8 114/24 144/10 144/21 148/9 148/10 151/13 152/17 154/6 158/12 161/1 162/22 163/8 163/22 169/15 169/19 174/23 179/20 180/10 181/23 182/12 185/5 196/1 196/8 203/22 216/24 222/2 231/16 238/10 246/5 247/13 sake [1] 230/20 sale [4] 44/17 215/15 220/18 220/24 saliva [4] 53/4 53/14 53/15 53/16 salvage [43] 16/6 16/14 22/11 23/21 24/4 30/21 48/2 48/3 48/4 48/8 48/12 49/2 49/7 66/1 66/18 76/16 78/18 82/21 82/23 86/15 90/19 90/24 92/8 92/10 94/18 105/6 105/11 105/18 117/25 123/20 123/21 126/10 126/25 </p>	

S		
<p>salvage... [10] 127/2 128/11 132/7 147/21 147/25 161/8 200/23 223/14 236/8 236/11</p> <p>salvaged [1] 124/1</p> <p>same [27] 7/12 15/18 15/19 19/4 61/12 75/15 80/19 86/23 93/1 100/8 106/9 110/12 111/6 123/19 160/7 178/3 178/25 201/2 201/3 211/15 211/25 211/25 212/13 212/13 212/13 214/17 241/16</p> <p>Samurai [1] 185/23</p> <p>sat [4] 19/2 164/14 196/11 239/20</p> <p>Saturday [12] 69/18 83/14 106/8 126/8 127/19 133/11 144/23 168/3 168/13 168/14 169/9 175/25</p> <p>save [1] 195/19</p> <p>saw [18] 83/21 83/22 111/5 116/24 140/7 147/23 170/1 183/19 195/10 195/17 222/2 231/20 238/8 238/20 238/21 239/9 239/15 240/2</p> <p>saying [7] 41/25 157/10 167/8 167/9 174/16 190/21 233/17</p> <p>says [5] 142/15 144/7 145/4 151/14 211/11</p> <p>scale [1] 44/11</p> <p>scene [82] 16/10 48/5 54/6 60/24 66/10 68/23 71/1 73/11 75/10 75/13 75/14 75/16 78/22 79/22 79/23 79/25 80/1 80/10 80/21 80/24 81/22 82/7 82/20 83/11 83/14 88/1 88/4 88/5 88/5 88/8 88/11 88/14 88/16 88/16 88/24 89/5 89/16 89/18 94/6 94/12 95/20 96/7 102/19 103/4 103/15 103/22 103/24 104/24 105/5 109/8 109/9 109/10 113/24 122/2 123/13 123/15 124/22 125/12 127/13 131/24 132/10 132/25 133/10 136/4 139/11 142/13 147/13 149/11 152/10 155/2 155/2 157/9 159/1 190/3 193/3 200/8 201/14 201/16 202/15 202/24 218/6 218/21</p> <p>scenes [11] 6/11 79/20 80/7 88/18 93/19 103/11 132/22 133/7 200/17 206/8 206/9</p> <p>scent [33] 6/18 7/13 14/22 14/24 15/3 15/5 15/6 15/8 15/13 21/3 21/4 22/21 36/10 36/13 39/1 39/5 41/19 41/20 41/22 41/24 42/25 50/2 50/3 50/15 50/19 50/21 51/1 51/1 51/3 53/10 53/23 54/11 60/12</p> <p>scented [1] 49/25</p> <p>scenting [1] 50/5</p> <p>scents [1] 46/8</p> <p>schedule [1] 131/12</p> <p>Schetter [3] 139/19 140/8 140/9</p> <p>school [1] 88/9</p> <p>scientist [1] 94/9</p> <p>scope [5] 6/16 62/6 62/9 82/11 222/9</p> <p>scratch [1] 35/7</p> <p>screen [12] 19/12 19/14 30/24 57/6 99/11 117/3 189/7 189/20 193/23 210/1 211/13 226/19</p> <p>se [1] 47/18</p> <p>search [170] 5/9 5/10 5/11 5/12 5/14 5/16 5/17 5/23 6/11 6/16 6/18 6/22 7/3 10/17 10/20 12/4 12/11 15/5 16/2 24/7 25/6 50/6</p>	<p>56/1 58/11 67/21 67/24 70/20 73/13 73/15 73/18 73/21 74/4 74/6 74/7 75/8 76/5 78/6 78/11 79/4 79/15 79/16 79/18 80/3 80/6 80/9 80/21 80/22 81/22 81/23 82/10 82/11 82/12 82/17 84/18 84/19 84/21 84/22 85/1 85/2 85/4 85/6 85/9 85/12 85/19 85/25 86/24 89/1 89/24 90/6 90/14 90/17 90/18 90/24 91/3 101/21 101/25 101/25 102/3 102/3 102/7 102/7 102/11 104/6 104/25 106/11 108/5 109/6 109/12 109/23 109/23 111/22 113/15 113/19 114/5 114/15 115/7 115/9 115/18 116/12 119/1 119/4 119/7 119/15 120/16 121/7 121/9 121/11 121/16 121/17 122/4 122/6 123/20 123/22 123/25 126/23 131/22 139/24 156/9 157/20 158/7 158/20 159/16 160/25 161/4 162/23 163/12 163/14 163/25 164/16 164/22 167/13 167/20 168/1 168/10 168/12 177/10 177/23 199/20 199/25 201/23 201/25 203/4 203/4 203/12 204/20 205/7 207/24 213/2 213/9 216/6 218/6 219/15 223/14 223/17 223/19 224/6 224/14 224/14 225/2 225/12 225/19 227/9 236/6 236/13 237/3 237/5 237/15 237/17 238/1 238/5</p> <p>searched [11] 11/18 55/20 79/17 105/20 105/21 109/4 109/20 115/2 194/25 236/14 237/7</p> <p>searchers [5] 70/1 109/15 165/9 204/5 224/9</p> <p>searches [30] 6/7 6/15 7/1 7/6 10/3 70/24 79/13 80/14 81/3 83/11 85/23 101/4 101/9 104/11 109/4 119/23 159/13 160/17 188/8 195/7 201/18 203/8 203/17 203/19 203/20 224/24 225/1 235/25 236/1 236/23</p> <p>searching [18] 72/13 72/18 78/13 78/17 86/2 90/11 107/4 114/16 114/20 115/24 127/16 163/11 163/13 176/4 178/9 223/19 227/13 236/24</p> <p>seat [6] 227/17 227/18 227/19 229/19 229/19 238/24</p> <p>seated [7] 4/22 63/19 129/6 171/11 174/12 222/22 235/8</p> <p>second [12] 27/7 29/9 77/11 108/4 148/9 169/1 184/6 190/13 202/5 209/10 210/17 244/10</p> <p>secondary [1] 74/23</p> <p>seconds [1] 246/6</p> <p>section [5] 101/16 110/10 116/10 223/20 224/14</p> <p>secure [14] 20/16 21/19 22/1 58/6 75/14 79/23 79/25 88/5 88/16 95/24 130/23 153/8 187/3 236/1</p> <p>secured [4] 20/17 97/1 100/17 101/2</p> <p>securing [1] 78/7</p> <p>security [4] 88/1 123/15 153/25 154/22</p> <p>seeing [2] 92/6 148/2</p> <p>seem [3] 53/9 224/17 231/22</p> <p>seems [1] 9/23</p> <p>seen [16] 16/18 25/21 106/14 106/16 128/19 136/18 142/8 144/10 178/20 191/13 195/16</p>	<p>206/1 206/4 230/13 233/12 233/12</p> <p>seize [2] 106/16 117/11</p> <p>seized [23] 85/8 106/10 107/18 109/3 110/21 110/23 117/16 117/20 117/24 118/3 160/14 177/13 177/15 213/10 213/17 213/21 214/17 214/21 215/5 215/18 215/22 216/2 221/9</p> <p>select [1] 7/2</p> <p>selected [3] 6/25 23/1 102/10</p> <p>Semen [1] 53/2</p> <p>send [8] 80/13 84/10 109/17 120/11 125/4 178/21 182/4 209/12</p> <p>sending [1] 169/13</p> <p>sense [7] 38/18 39/11 39/15 83/21 89/14 197/17 197/21</p> <p>sensitive [1] 39/9</p> <p>sent [14] 81/21 84/4 84/7 120/19 136/23 136/24 168/19 169/5 169/14 182/9 195/25 196/22 204/7 214/3</p> <p>separated [1] 241/16</p> <p>septic [2] 11/11 40/15</p> <p>sequester [1] 242/17</p> <p>sequestered [1] 153/14</p> <p>sergeant [15] 129/17 145/7 148/16 153/20 165/14 165/14 165/18 175/16 175/18 175/21 178/3 180/12 180/12 181/2 182/10</p> <p>serial [2] 119/14 180/15</p> <p>series [1] 31/17</p> <p>serrated [1] 163/17</p> <p>serrations [1] 82/5</p> <p>serve [1] 121/6</p> <p>served [1] 18/4</p> <p>service [3] 96/14 96/14 96/16</p> <p>services [3] 67/23 68/19 69/2</p> <p>session [1] 69/24</p> <p>set [16] 7/17 8/16 8/19 8/19 8/21 36/9 49/9 89/11 100/25 130/19 141/1 141/4 163/9 227/19 228/25 229/6</p> <p>setting [4] 28/2 32/22 89/15 95/23</p> <p>seven [3] 12/11 38/13 134/21</p> <p>seventh [1] 5/19</p> <p>several [9] 18/2 28/21 64/16 120/6 126/7 169/17 171/17 178/23 236/12</p> <p>Shaking [1] 232/12</p> <p>shape [2] 37/22 155/7</p> <p>shaves [2] 56/13 162/16</p> <p>Sheboygan [2] 30/1 30/2</p> <p>shed [1] 225/23</p> <p>sheet [2] 200/16 200/19</p> <p>sheets [1] 206/4</p> <p>shell [3] 198/12 203/24 204/4</p> <p>shells [7] 198/15 198/20 199/1 199/3 203/22 204/8 204/10</p> <p>shelter [1] 9/11</p> <p>Shepherd [5] 7/5 7/9 25/10 34/15 59/3</p> <p>shepherds [5] 9/4 58/24 59/1 59/2 59/4</p> <p>sheriff [12] 65/14 66/11 69/15 88/10 139/5 139/6 139/8 139/18 140/6 143/20 153/24 158/2</p> <p>sheriff's [20] 66/13 66/14 67/3 67/4 67/8 67/10 67/13 68/9 69/14 103/3 107/6 110/24 117/17 126/21 140/4 140/9 175/15 196/12 201/12 218/4</p> <p>shirt [2] 50/12 224/20</p> <p>shoe [1] 50/12</p>

S	situation [2] 60/17 165/2 six [3] 181/15 186/9 186/12 sixth [2] 5/19 180/20 size [4] 49/2 64/25 75/16 86/4 skill [1] 148/22 skin [6] 40/20 53/7 53/10 53/23 54/3 54/23 skirted [1] 57/8 skull [1] 198/24 sleet [4] 22/16 23/13 32/8 91/14 sleeting [1] 24/21 slide [1] 176/10 slides [1] 193/11 sloughed [1] 54/3 sloughing [2] 53/10 53/24 slowly [2] 225/3 228/14 small [5] 7/13 46/2 127/5 177/10 203/15 smaller [4] 67/6 135/7 135/23 181/1 smell [9] 14/23 15/18 15/19 15/21 23/5 39/6 39/9 39/15 50/15 smelled [1] 20/12 smelling [6] 21/6 21/16 40/18 51/10 51/13 51/16 smells [3] 15/8 15/22 17/11 smelter [10] 195/8 195/21 196/2 197/2 197/5 197/14 197/18 209/6 209/6 209/11 sniff [1] 34/20 snow [1] 22/18 snowing [2] 22/24 23/3 so-called [2] 69/13 90/13 society [1] 40/7 somebody [11] 48/11 53/14 59/20 111/25 133/25 170/21 170/24 201/22 206/15 210/22 223/21 somebody's [1] 88/21 somehow [1] 146/25 someone [16] 13/22 36/6 36/9 51/22 56/13 59/6 70/23 111/2 112/2 121/13 143/14 152/10 164/7 169/6 195/25 243/8 something [50] 9/25 10/16 10/25 21/6 22/25 23/5 34/6 35/7 37/7 43/23 44/13 46/17 50/9 50/12 52/3 53/24 55/14 61/5 73/5 73/9 100/23 101/22 111/24 111/25 112/2 122/10 130/14 130/15 138/16 142/2 145/2 149/13 158/13 158/17 160/20 163/17 175/4 176/9 176/15 179/23 182/1 187/5 187/22 194/12 196/5 199/9 216/24 217/11 225/8 228/16 sometime [2] 66/3 72/19 sometimes [17] 10/18 10/20 11/12 19/8 21/2 21/22 33/14 34/5 34/7 38/25 39/23 48/17 48/20 52/15 108/24 135/23 235/22 somewhat [2] 135/15 151/23 somewhere [9] 25/25 78/22 91/22 105/9 142/19 191/1 200/11 231/6 232/1 sorry [23] 27/21 38/1 94/2 99/9 100/15 101/20 140/3 141/22 144/23 149/18 150/1 178/2 179/8 183/12 187/13 187/17 188/23 201/1 202/9 213/23 225/17 226/7 233/7 sort [24] 31/19 32/18 34/5 34/8 34/12 35/4 35/8 35/14 35/16 40/21 41/19 43/14 46/3 46/9 47/14 51/23 55/10 135/17 150/16	157/21 160/17 172/25 196/23 233/15 sound [1] 178/12 sounding [1] 59/13 sounds [4] 12/20 29/21 159/18 178/13 source [25] 8/21 11/16 11/20 20/3 21/8 21/13 23/4 35/22 36/10 36/14 37/4 39/1 39/5 41/21 45/20 45/22 46/12 49/22 52/20 54/8 54/11 56/16 129/21 243/23 244/1 sources [7] 7/13 11/20 15/24 26/15 27/25 45/12 179/21 south [10] 32/14 76/11 92/9 114/19 124/16 150/12 150/14 151/19 226/23 231/3 southeast [3] 92/9 149/24 189/24 southeasterly [1] 108/1 southern [2] 31/1 94/18 southernmost [1] 92/11 southwest [1] 191/24 span [1] 54/4 spare [1] 99/17 spatter [2] 206/13 206/17 speak [10] 33/23 34/7 39/4 80/2 80/11 137/7 140/2 155/13 157/23 219/6 speaking [2] 41/19 140/6 special [13] 1/11 1/13 1/15 2/9 4/10 50/6 63/16 64/1 64/15 64/18 65/25 194/21 244/20 specialists [2] 84/14 168/11 specialization [1] 83/25 specialized [3] 43/14 71/8 71/13 specific [23] 5/22 6/24 7/25 11/15 15/8 27/24 39/21 52/24 53/6 64/13 69/9 69/10 79/17 109/11 109/12 141/22 148/23 171/20 203/17 210/24 225/18 237/2 238/6 specifically [14] 16/14 18/7 19/16 24/25 59/1 59/2 60/11 74/4 76/9 155/20 172/13 175/13 236/25 239/5 specify [1] 205/19 speculating [2] 188/14 199/12 speculation [3] 27/2 27/8 197/20 spell [4] 4/23 63/20 222/23 235/9 spending [1] 219/1 spent [1] 185/9 spite [1] 7/11 spits [1] 53/15 spoke [2] 117/22 139/20 spots [1] 71/2 spouse [2] 170/10 170/11 square [1] 57/5 squeezed [1] 202/4 squint [1] 162/9 ss [1] 247/1 stabbed [1] 207/1 stabbing [2] 82/4 206/15 Stabbings [1] 206/11 staff [1] 112/5 stage [2] 83/9 162/24 staged [1] 133/14 stages [1] 71/20 staging [2] 133/12 142/21 stains [3] 199/10 199/16 207/20 stand [5] 4/17 63/10 222/14 222/15 222/17 standard [1] 200/8 standards [1] 8/16 standing [6] 192/11 192/14 193/1 226/24 227/2 229/4
----------	--	--

S	<p>stands [1] 119/3 start [23] 13/19 13/20 15/19 69/3 71/18 73/21 79/4 79/7 79/10 81/3 82/12 87/22 90/4 90/18 133/15 164/15 169/16 169/24 169/25 170/2 173/3 175/7 182/5 started [22] 5/16 9/12 23/13 32/9 54/17 63/9 76/19 79/10 79/12 91/14 92/7 100/22 113/21 116/3 118/7 133/18 142/20 143/5 161/6 189/10 194/3 222/12 starting [1] 91/17 state [46] 1/1 1/3 1/12 1/14 1/16 4/2 4/4 4/7 4/17 4/22 63/14 63/19 77/8 78/20 83/7 84/10 86/17 112/21 123/12 123/13 129/25 130/4 135/2 135/3 135/7 171/19 172/12 173/13 173/16 174/7 200/15 214/1 218/7 222/11 222/22 223/18 224/4 228/17 234/7 235/8 235/14 235/15 235/19 236/2 247/1 247/5 State's [2] 4/15 173/12 statement [1] 172/17 station [9] 226/12 227/7 227/9 232/1 232/7 232/21 233/5 238/22 239/21 stations [1] 136/11 status [1] 243/17 stay [1] 245/9 stayed [1] 172/18 Steier [1] 159/19 stem [1] 55/25 stenographic [1] 247/9 steps [2] 207/12 243/24 stern [1] 55/25 Steve's [2] 187/12 187/13 STEVEN [26] 1/6 1/21 4/2 4/12 55/13 55/17 79/10 82/24 83/12 87/4 101/11 104/6 106/11 107/14 109/24 110/22 112/11 116/11 119/13 120/2 120/8 124/9 124/15 125/23 162/15 187/13 Steven's [3] 110/3 182/21 183/18 sticker [1] 196/8 sticks [1] 112/7 still [17] 14/12 14/22 23/10 65/17 73/2 78/17 131/11 144/16 152/4 157/22 158/13 160/3 166/21 167/12 190/15 209/17 220/3 stoop [1] 207/11 stop [7] 17/24 19/12 54/4 59/14 81/9 108/3 244/8 stopped [3] 48/11 91/21 202/3 stops [1] 54/8 stormed [2] 91/23 92/2 storms [1] 91/9 straighten [1] 35/15 STRANG [14] 1/17 2/5 2/7 2/17 4/13 27/7 27/18 60/9 208/18 230/16 231/10 234/22 242/5 245/13 strength [1] 221/8 stretch [3] 63/10 86/16 222/16 strike [4] 149/22 181/25 221/25 233/1 stripped [1] 205/15 struck [1] 61/4 structure [2] 14/3 46/23 stuff [8] 73/25 88/25 120/20 121/22 126/22 127/7 128/13</p>	<p>225/10 Sturtivant [1] 186/5 subject [2] 14/21 221/7 subpoenaed [1] 128/13 subsequent [2] 117/18 199/19 substance [1] 104/15 success [1] 60/23 successful [5] 10/12 10/15 14/18 28/5 42/24 successfully [2] 26/20 28/1 such [5] 68/19 115/6 128/19 130/3 133/7 sued [1] 141/10 sufficient [1] 54/23 suggest [4] 32/15 130/18 155/16 197/8 suggested [4] 155/10 171/24 204/14 212/7 suggestion [2] 210/21 210/25 sum [2] 176/19 176/22 summarized [1] 150/16 summoned [1] 238/6 Sunday [17] 104/19 104/22 105/21 105/23 107/17 109/9 109/10 110/16 110/21 112/8 112/19 112/20 112/22 120/22 178/15 178/19 179/13 supervisor [1] 202/2 support [3] 67/16 68/16 69/1 suppose [2] 30/8 177/12 supposed [2] 44/24 147/4 supposedly [1] 181/12 surely [1] 166/6 surprise [2] 49/20 220/22 surrounding [3] 191/8 208/11 216/16 surveys [1] 128/16 suspect [5] 35/17 87/16 108/14 136/6 170/10 suspects [1] 135/25 suspend [1] 91/13 suspended [2] 104/3 104/5 suspicious [2] 188/10 224/17 sustain [3] 197/23 220/9 222/8 sustained [2] 117/1 211/21 SUV [18] 79/2 91/12 92/1 92/17 94/5 94/16 94/21 97/12 97/20 98/13 101/5 118/18 210/6 210/10 210/11 210/16 212/1 212/6 sweep [19] 74/17 74/18 74/23 75/4 75/7 76/2 76/15 78/7 78/12 90/7 101/18 101/20 158/10 159/15 160/18 160/18 164/13 184/24 185/6 sweeping [2] 74/19 75/10 sweeps [4] 74/25 76/8 162/25 164/17 swept [2] 75/22 75/25 SWH [1] 240/5 SWH-582 [1] 240/5 sworn [6] 4/20 63/18 217/5 222/20 224/2 235/6 system [1] 40/15 systems [1] 11/12</p>	<p>151/5 155/17 180/15 181/25 184/12 186/15 186/16 189/6 189/21 197/18 202/11 219/10 228/1 229/2 229/2 230/4 230/24 233/20 235/2 243/23 taken [30] 9/2 22/3 24/14 29/7 63/7 77/23 97/21 98/9 106/15 110/23 117/16 118/3 127/13 131/14 142/17 155/9 186/20 187/10 189/12 190/2 190/13 190/25 191/22 192/12 210/15 211/12 212/17 229/7 229/16 247/9 takes [1] 222/16 taking [6] 61/4 61/22 73/3 78/16 97/6 193/3 talk [13] 6/13 13/18 22/12 32/23 69/25 73/12 74/4 79/14 88/18 91/4 138/9 167/17 226/16 talked [13] 83/25 89/7 92/4 101/3 101/18 101/20 103/14 104/13 107/3 120/22 135/16 148/9 178/23 talking [27] 17/25 27/3 42/3 42/5 46/11 68/13 72/24 75/4 76/19 81/1 90/22 90/23 103/10 117/4 117/20 119/8 121/11 131/21 142/10 154/19 173/3 174/18 190/20 190/23 205/2 205/20 228/20 talks [1] 53/14 tamper [1] 93/6 tampered [1] 212/19 tampering [1] 210/23 tank [5] 25/8 25/8 25/9 25/25 57/8 tarp [20] 18/25 31/11 31/13 31/15 31/16 31/18 31/24 32/3 91/12 91/17 189/10 190/21 191/4 191/6 191/15 191/17 192/2 192/3 192/7 194/1 tarped [4] 210/10 212/6 212/11 212/13 tarping [1] 210/16 tarps [3] 192/24 193/7 209/17 task [3] 38/22 70/17 71/17 tasks [1] 103/3 taught [1] 46/19 team [57] 6/22 7/17 9/2 9/14 12/3 12/3 12/8 16/12 16/23 22/5 22/5 30/19 67/9 69/11 70/5 79/5 79/6 79/9 102/7 102/11 105/17 105/25 106/2 107/7 109/14 109/23 109/25 110/1 110/4 110/7 115/23 119/6 120/16 120/16 127/6 160/5 160/7 164/15 165/9 166/22 167/22 167/25 168/1 168/16 169/13 169/14 175/11 175/12 175/23 175/23 177/25 178/25 179/16 180/25 204/5 204/7 224/6 teams [19] 103/8 105/15 105/25 107/4 107/4 110/8 115/15 115/17 115/21 115/22 116/12 117/15 119/10 119/11 119/12 148/10 148/12 160/4 162/19 technical [1] 67/12 technicians [6] 71/7 106/4 106/13 127/6 166/24 167/21 techs [4] 93/21 102/18 103/15 122/9 tedious [1] 98/18 teeth [1] 41/22 telephone [2] 85/17 128/12 television [5] 30/3 30/8 136/11 243/2 243/6 tell [55] 5/7 8/25 13/1 16/8 19/16</p>
T	<p>table [5] 40/14 45/15 213/11 214/18 215/16 tag [2] 239/10 241/5 take [39] 11/14 17/9 17/15 49/18 65/4 66/14 76/25 79/1 96/1 96/13 117/10 118/10 121/7 121/24 124/21 128/23 129/1 129/7 145/19</p>		

T

tell... [50] 20/11 21/5 23/16 25/9 34/1 46/21 51/9 51/12 51/15 51/18 51/22 84/18 90/9 91/7 91/7 92/6 93/24 94/14 101/8 102/13 103/6 104/21 107/12 109/22 113/18 116/24 120/14 124/13 126/14 128/6 142/9 148/14 167/15 195/16 201/10 219/21 220/4 223/4 223/8 225/1 226/10 226/20 227/11 230/1 238/8 238/20 239/1 239/13 240/21 241/10

telling [5] 33/16 33/17 118/15 166/18 216/16

Ten [1] 145/3

tend [3] 34/14 52/13 197/15

Tennessee [2] 43/15 43/16

tent [1] 194/11

tentative [1] 34/6

tented [2] 31/19 31/22

Teresa [30] 5/9 5/12 50/1 51/3 51/10 66/17 72/14 72/18 74/15 74/20 75/18 136/16 136/22 159/23 168/15 177/7 182/16 183/14 198/7 199/13 204/14 207/21 208/1 220/13 220/21 221/3 221/13 234/5 239/6 239/10

Teresa's [6] 79/2 94/16 124/2 127/9 127/14 183/1

term [4] 82/16 84/16 87/8 170/5

terms [2] 79/15 173/5

Tesheneck [3] 1/24 247/4 247/19

test [6] 13/4 13/21 26/15 27/24 44/12 113/12

tested [1] 53/18

testified [11] 4/21 63/18 92/21 147/2 159/4 173/1 191/21 215/9 215/11 222/21 235/7

testify [5] 92/25 95/12 113/2 130/20 133/3

testifying [2] 116/19 130/17

testimony [15] 19/15 27/12 27/15 77/13 77/22 85/16 134/18 153/18 153/21 154/3 154/5 161/13 168/23 176/12 222/2

testing [10] 7/19 7/22 7/23 8/12 12/10 13/2 13/3 13/14 38/7 125/25

thank [29] 4/14 4/16 28/11 60/2 60/3 62/24 63/3 78/2 81/17 131/13 131/18 134/10 146/16 171/14 174/14 186/23 202/14 208/4 214/14 219/7 221/16 221/23 223/3 226/10 230/15 233/1 242/3 242/9 246/11

Thanks [1] 62/23

that area [1] 126/4

the first [1] 213/2

their [27] 4/5 6/10 7/4 8/8 12/10 39/24 68/17 71/3 71/12 78/25 89/18 95/25 112/5 115/18 116/2 119/7 126/19 132/18 132/19 143/18 148/22 148/22 195/3 202/2 207/14 218/24 219/22

themselves [4] 6/13 34/21 180/7 199/22

theory [2] 45/3 197/2

there's [30] 7/22 10/16 13/9 16/16 54/4 56/11 64/9 73/1 79/21 79/21 81/7 87/18 92/12 94/5 105/16 131/6 135/24 146/23 157/14 160/12 160/19 165/2 165/5 167/14

167/15 169/7 173/8 226/20 226/24 234/3

thereafter [3] 24/14 184/9 247/11

therefore [1] 173/21

these [52] 6/25 10/2 13/7 20/10 39/8 43/3 44/13 45/10 46/12 46/23 55/1 68/12 75/4 80/7 80/13 80/14 90/24 90/25 97/9 98/9 98/19 103/11 105/19 109/2 114/21 116/12 116/18 125/11 129/21 132/21 148/12 159/12 161/1 164/17 166/3 166/10 174/17 184/12 189/8 193/9 193/11 194/6 198/18 200/7 212/17 224/24 225/1 232/16 233/18 238/18 241/4 242/23

thing [9] 7/12 14/7 40/21 48/7 53/8 61/12 75/3 75/6 75/15 80/19 84/23 95/25 109/5 135/18 139/11 158/9 182/23 191/11 217/3

things [39] 11/14 21/24 33/16 33/25 35/18 55/1 64/19 68/19 68/21 68/22 80/5 80/16 83/18 86/2 88/9 97/8 97/17 97/18 102/1 102/2 106/21 115/6 120/21 121/1 121/14 121/15 121/16 125/17 127/14 128/7 129/11 131/3 141/19 155/8 179/21 182/13 187/1 188/17 194/7

think [80] 14/20 27/12 28/9 42/16 43/6 54/2 59/6 62/12 67/7 67/8 68/1 73/20 74/8 76/23 80/18 81/2 81/11 84/2 85/18 87/8 87/17 87/21 89/12 95/5 99/23 107/3 107/25 116/19 116/22 118/6 127/5 127/23 133/13 136/7 139/23 139/23 141/8 142/14 152/9 152/12 152/17 153/20 154/15 156/1 156/1 160/5 160/10 160/16 162/10 163/8 169/19 171/3 176/11 177/11 178/1 182/12 182/23 183/21 184/18 184/20 185/5 188/5 188/11 191/14 191/17 201/25 209/16 209/21 222/9 223/7 224/22 226/3 226/23 229/12 230/14 231/24 232/10 242/11 244/12 245/14

thinking [3] 73/5 151/16 158/13

third [4] 10/11 45/5 124/4 179/8

thirds [1] 230/8

THOMAS [3] 1/13 2/9 63/16

thorough [7] 121/9 121/11 121/16 122/3 122/6 137/12 137/18

thoroughly [2] 205/10 224/15

those [97] 10/12 12/15 12/18 27/5 32/6 34/11 40/10 48/10 49/9 49/10 50/23 58/1 58/24 64/24 65/3 66/8 67/18 69/10 70/24 71/15 71/20 72/16 72/16 80/4 84/19 84/25 85/14 86/20 89/19 93/23 96/3 97/5 97/6 97/8 101/5 102/18 103/8 103/21 103/22 105/15 106/23 107/2 109/22 114/13 114/14 114/15 115/10 118/3 120/1 123/21 124/1 125/19 126/16 127/3 128/1 130/17 130/20 130/21 130/23 130/23 132/16 134/7 135/20 139/16 148/14 164/9 165/19 166/12 169/18 172/13 172/22 175/14 176/4 177/18 178/22 185/18 189/21 189/22 190/12 190/13 199/13 199/16 201/1 203/17 203/21 207/24 209/19 212/4 216/17 216/19

221/12 229/7 238/15 239/1 240/8 241/15 246/1

though [21] 9/16 41/19 48/14 73/2 87/1 118/23 136/3 158/1 163/8 163/19 178/1 183/25 191/3 197/15 204/12 205/1 209/5 210/11 218/23 219/19 240/16

thought [13] 61/17 99/25 108/13 109/15 141/14 151/18 180/3 182/20 185/19 188/11 191/18 219/22 228/16

thousand [1] 54/18

thousands [1] 58/22

threatening [2] 23/10 189/1

three [23] 11/20 12/4 12/6 43/21 82/8 105/24 118/8 125/19 126/17 131/22 165/12 165/16 167/11 170/19 174/25 175/14 178/3 184/10 186/18 220/5 220/8 227/21 246/6

through [36] 11/13 17/9 17/16 37/15 55/22 55/23 61/3 74/19 75/4 85/15 93/23 97/9 109/25 110/1 110/4 110/7 110/9 114/13 118/8 128/18 134/4 139/15 144/12 145/20 159/12 161/6 172/16 173/4 177/21 182/8 184/21 198/5 207/2 225/7 227/4 227/14

throughout [4] 72/9 83/15 131/2 163/6

thumb [2] 228/2 233/20

Thursday [2] 72/25 126/8

thus [1] 82/7

time [117] 4/1 4/15 7/24 8/3 8/5 11/18 12/7 16/22 18/13 22/4 23/12 24/20 25/11 26/17 26/19 27/17 27/23 28/10 30/9 30/10 30/13 31/4 33/2 34/25 34/25 35/4 38/9 38/13 55/20 58/18 59/13 63/12 65/16 65/21 72/4 72/19 76/18 76/23 76/25 78/19 86/23 91/16 92/1 93/1 102/6 105/5 106/7 106/9 106/22 110/12 111/6 111/14 120/17 128/24 129/1 129/14 130/16 130/19 131/8 131/16 133/18 133/21 133/23 134/4 134/22 143/13 145/6 146/9 150/2 151/2 152/12 154/4 154/6 155/22 156/24 157/18 158/15 163/6 166/2 166/5 167/18 172/4 173/5 177/1 178/6 178/9 181/1 184/15 186/6 186/15 186/17 198/5 198/6 198/15 198/22 199/6 203/1 204/12 204/25 205/1 205/9 211/15 211/25 212/13 212/17 212/22 217/7 217/9 220/19 221/6 227/20 228/7 234/19 238/5 241/22 244/4 245/2

times [19] 11/9 14/19 21/7 21/23 41/15 64/25 65/1 80/15 82/11 86/18 109/16 120/7 125/7 162/21 162/22 168/8 184/10 220/8 230/20

tire [2] 99/17 116/14

tissue [16] 40/20 40/24 41/9 41/18 42/1 42/6 45/1 46/9 47/1 47/15 47/21 51/16 51/19 52/22 53/6 54/24

today [12] 12/11 29/3 38/17 69/3 151/3 153/13 161/13 209/16 217/19 242/12 244/8 246/10

together [16] 6/2 6/4 69/21 79/6 102/7 148/10 162/24 163/2 164/15 165/9 167/22 175/10 175/12

T
together... [3] 183/16 193/17 228/3
told [24] 20/12 21/22 78/5 82/2
 118/15 133/14 158/21 159/13
 163/16 163/25 165/19 166/3
 166/19 178/14 180/16 181/5
 195/20 216/14 219/9 219/12 234/5
 239/3 239/5 240/9
toll [1] 128/12
Tom [3] 4/8 63/14 63/21
took [17] 13/4 16/23 81/8 97/2
 106/19 117/13 121/3 122/19 153/8
 155/4 158/25 163/15 205/16
 217/12 225/8 239/16 239/25
tool [8] 127/10 127/11 183/9
 183/13 183/16 183/22 185/12
 185/20
tools [3] 114/21 114/23 185/22
tooth [2] 54/9 54/22
top [3] 97/14 143/20 228/2
topic [1] 194/17
torrential [1] 91/24
total [4] 69/4 69/7 176/19 176/22
touch [2] 194/7 240/15
touching [2] 91/12 191/7
tow [1] 135/17
toward [10] 24/18 25/14 37/24
 97/21 110/3 116/2 116/10 144/20
 225/23 226/23
towards [8] 115/17 115/18 145/4
 173/6 190/15 212/1 212/6 212/10
towed [3] 48/11 48/22 96/23
township [2] 83/1 83/4
Toyota [10] 33/18 49/10 51/9
 122/14 122/16 123/3 123/3 123/4
 181/24 192/23
Trace [1] 121/22
traces [2] 56/9 56/12
track [6] 7/4 9/21 9/23 10/4 12/15
 133/6
tracking [2] 6/17 54/5
Trader [3] 86/13 215/5 215/8
traffic [5] 128/16 128/17 235/18
 235/18 235/20
trail [3] 206/25 207/7 207/16
trailer [60] 24/3 24/5 24/15 24/17
 24/18 55/9 55/13 55/15 55/22
 57/18 57/19 57/20 58/7 79/11
 80/23 89/17 95/25 96/17 96/24
 97/1 97/1 100/16 100/17 100/25
 101/2 106/14 107/1 110/2 117/17
 119/13 119/15 120/24 121/1 122/7
 122/10 125/24 125/25 159/15
 160/7 160/9 161/11 161/19 161/24
 161/24 164/14 168/7 168/10 175/8
 179/9 179/14 183/18 184/25 198/8
 199/4 200/1 208/2 220/15 221/3
 221/14 222/3
train [8] 7/18 13/19 14/22 38/4
 40/22 43/21 44/12 47/8
trained [30] 5/18 11/16 14/25
 15/17 15/21 15/23 16/12 17/10
 18/23 19/3 20/9 24/12 26/12 27/5
 35/18 35/23 36/11 41/3 46/6
 50/24 58/12 70/23 71/4 90/13
 103/9 103/19 125/6 125/9 148/11
 167/21
trainers [1] 44/2
training [25] 5/16 7/25 11/13 12/6
 15/23 26/9 26/14 30/12 30/18
 36/5 36/9 37/3 37/11 37/17 39/14
 43/3 43/16 43/19 44/3 45/6 61/1

71/9 71/13 102/16 148/22
transcribed [1] 247/11
transcript [3] 1/23 247/8 247/12
transcription [1] 247/11
transferred [1] 153/24
transpired [1] 77/15
transported [2] 104/16 122/20
treat [1] 74/13
tree [1] 100/3
trees [4] 94/19 97/13 99/1 191/8
trend [1] 44/19
tri [1] 233/13
tri-fold [1] 233/13
trial [9] 1/4 1/4 4/4 153/16 171/15
 172/14 211/10 243/5 244/2
tried [3] 128/16 191/6 194/6
trooper [13] 2/19 184/12 228/17
 229/2 234/7 234/10 234/16 235/3
 235/5 235/16 236/2 236/3 238/1
troopers [8] 123/11 123/12 123/17
 223/18 224/4 235/17 236/20
 237/19
trouble [2] 165/4 176/7
truck [1] 110/22
trucks [1] 135/17
true [16] 35/19 36/2 38/24 39/17
 40/4 44/14 47/14 49/1 56/8 56/15
 61/11 158/19 171/3 177/20 204/18
 247/12
truly [1] 218/19
trunk [5] 49/15 110/14 200/15
 225/5 225/6
trunks [2] 105/12 105/21
truth [4] 87/12 87/13 113/5 141/13
try [14] 39/24 70/2 70/6 88/17
 91/11 132/22 138/22 140/23
 141/16 159/10 176/9 179/22
 190/18 194/2
trying [8] 37/13 96/2 153/8 155/7
 158/6 162/23 163/2 191/11
Tuesday [8] 119/18 120/11 120/15
 123/5 124/5 125/15 126/18 181/5
turn [4] 123/1 123/2 130/4 219/25
turned [13] 60/13 77/10 77/19
 104/2 124/2 127/17 131/6 132/2
 140/18 140/19 154/6 183/1 188/15
TV [1] 30/3
Twenty [1] 134/21
Twenty-seven [1] 134/21
twice [2] 20/18 227/21
two [58] 6/21 24/24 29/16 29/16
 32/6 34/12 42/22 60/16 60/23
 61/24 62/4 62/12 62/17 65/2 67/5
 68/11 69/12 73/14 77/6 97/23
 98/13 103/22 105/24 106/23
 110/21 113/3 114/1 118/8 118/14
 122/23 123/25 124/1 128/22
 159/21 166/10 166/12 166/25
 175/16 176/5 176/23 184/11
 184/18 185/9 185/18 187/16
 187/19 189/8 189/21 191/18 192/7
 193/16 200/17 216/19 231/20
 232/16 240/12 241/4 241/21
type [14] 6/7 15/23 20/13 24/23
 48/5 82/4 82/6 128/13 159/16
 161/2 191/11 194/11 200/18 201/2
types [5] 6/22 9/4 64/24 71/15
 80/15
typical [3] 42/21 88/19 88/20
typically [6] 35/11 50/7 64/22 65/5
 65/6 112/3
Tyson [3] 175/21 180/12 213/2

U
uglier [2] 22/15 22/15
ugly [1] 23/14
ultimate [1] 122/19
ultimately [5] 91/16 117/14 117/16
 133/11 185/23
unacceptable [2] 37/21 37/22
unattached [2] 107/16 109/24
uncommon [1] 43/3
uncommonly [2] 56/7 56/12
uncovered [1] 87/15
under [17] 31/11 31/13 31/15
 31/24 32/3 43/15 64/7 116/15
 121/8 121/15 137/7 137/9 154/12
 154/22 212/21 225/10 230/2
underneath [2] 14/21 18/24
understand [13] 35/16 41/25 45/14
 55/5 71/22 73/12 98/17 115/20
 132/18 132/20 146/7 156/16 174/1
understanding [6] 77/14 105/19
 115/2 125/10 152/13 221/7
understands [2] 130/22 243/13
understood [5] 45/16 47/3 58/12
 121/18 222/4
undertook [1] 137/12
unfair [2] 141/5 141/9
unfairness [1] 141/3
unfold [1] 239/4
unfolded [2] 66/24 228/23
unfortunately [1] 48/17
Unit [1] 89/13
units [2] 90/9 90/12
University [1] 43/15
unless [7] 52/17 75/14 144/3
 150/19 207/4 214/4 243/8
unoccupied [1] 110/2
unrelated [1] 183/4
until [13] 37/19 38/5 69/3 95/13
 153/7 157/18 157/20 168/14 176/2
 196/12 196/15 196/16 228/22
up [96] 6/18 8/19 8/21 17/2 18/18
 18/19 19/21 30/10 30/20 30/23
 31/4 31/6 31/11 32/11 32/14 36/9
 37/19 40/3 40/9 44/11 48/23
 49/13 57/10 57/12 63/10 64/16
 65/25 66/5 68/21 68/22 79/9 82/7
 86/6 86/8 86/10 86/11 88/17
 89/11 89/15 91/15 91/16 91/25
 96/22 97/6 97/24 99/1 99/8
 100/23 101/1 110/19 110/20
 110/21 110/24 115/22 118/6
 121/18 127/7 129/7 141/1 141/4
 142/17 147/21 149/19 150/5 153/1
 155/8 162/19 163/9 177/25 182/23
 183/23 185/24 187/1 188/14
 188/20 189/7 189/20 190/12
 193/19 196/2 198/8 198/13 203/3
 207/4 209/17 210/18 211/25 217/8
 217/9 222/15 223/21 223/22
 226/19 227/20 228/13 231/3
updates [2] 118/24 118/24
upon [3] 66/10 172/2 216/16
upper [2] 56/24 140/2
ups [1] 106/9
Upwards [1] 215/25
urban [7] 13/10 13/10 13/13 13/18
 14/1 14/2 14/8
urine [1] 56/9
us [49] 6/9 7/23 8/25 12/23 13/1
 15/8 16/15 17/16 17/22 18/1
 18/20 19/16 20/15 23/17 25/19
 31/9 41/9 43/22 45/23 78/5 80/13

U

us... [28] 82/2 92/6 93/24 102/13
103/7 106/14 106/15 106/20
107/24 109/22 112/17 118/15
126/14 131/23 149/21 163/15
209/14 219/22 223/23 224/4
226/20 226/20 230/1 230/6 238/17
241/2 241/10 245/20
use [11] 29/10 35/14 43/4 43/23
44/2 44/13 44/18 45/7 101/12
126/3 152/10
used [25] 7/5 22/6 22/8 22/9 25/7
26/15 26/18 43/18 50/4 77/10
82/6 84/13 84/13 84/15 84/16
87/8 91/19 100/9 164/6 167/23
180/1 191/18 197/7 197/14 245/5
using [5] 44/20 56/11 81/19 146/5
191/7
usual [1] 242/15
usually [5] 7/2 13/19 36/6 126/3
241/7
utilized [5] 71/1 76/9 76/15
105/10 113/22
utilizing [1] 106/2

V

vacuum [4] 106/18 106/19 106/24
187/4
value [9] 80/17 93/7 97/5 102/2
116/5 116/7 121/21 122/11 221/8
vantage [1] 210/5
various [8] 7/22 29/24 67/19 68/20
70/13 71/2 86/20 195/2
vehicle [67] 18/24 19/1 19/5 19/10
19/11 19/21 20/8 20/8 20/9 20/14
20/16 20/18 21/16 22/1 22/3 23/8
31/16 60/18 60/22 61/5 61/8 61/9
66/19 92/16 92/18 92/18 93/3
94/20 95/8 95/20 95/22 95/24
96/7 96/9 97/3 97/14 97/22 98/6
99/8 99/16 100/19 100/20 100/22
112/25 113/11 113/13 124/1
153/25 168/4 182/6 190/7 191/1
191/7 194/2 194/4 210/23 211/8
212/11 212/13 212/19 212/21
224/15 225/3 228/12 229/21
230/10 239/6
vehicles [18] 23/24 76/15 76/16
90/19 96/18 105/20 110/21 115/10
118/9 120/3 123/21 124/3 161/8
194/10 224/24 225/2 225/12 237/6
vehicular [1] 128/17
vendors [1] 135/16
verb [1] 50/4
verbiage [1] 196/4
verify [1] 239/4
version [1] 16/18
versus [1] 75/7
very [42] 7/7 7/13 14/18 15/8
18/12 19/1 20/4 25/23 28/15 37/1
37/3 37/5 37/17 37/25 38/19
38/21 40/23 44/5 44/24 47/2
47/24 53/21 58/5 60/3 60/20
60/25 62/15 63/1 71/20 80/23
89/2 92/2 103/12 134/7 143/1
154/12 163/9 164/13 203/17
224/15 242/1 244/8
vicinity [1] 105/9
victim [2] 170/19 224/19
victims [1] 14/19
view [6] 152/7 157/21 157/24
230/21 231/3 245/16

virtually [1] 128/22
visibility [1] 22/17
visible [1] 126/5
visit [1] 243/10
visually [1] 205/11
vital [1] 242/23
volume [1] 53/22
volunteer [7] 67/19 113/22 123/24
223/14 223/19 224/8 243/17
volunteered [2] 219/15 219/17
volunteering [1] 223/25
volunteers [4] 5/24 114/9 236/21
237/9

W

wagon [9] 226/12 227/7 227/9
232/1 232/7 232/21 233/5 238/22
239/21
wait [2] 168/14 209/10
waiting [3] 96/25 168/10 245/17
walk [2] 93/23 149/25
walked [1] 194/25
walking [4] 211/25 212/6 212/10
227/12
wallet [2] 233/13 233/13
walls [1] 206/18
want [40] 7/7 21/22 30/25 31/11
53/8 63/10 69/21 69/22 70/6 70/7
70/23 71/16 73/7 80/2 88/11
88/11 88/18 91/20 103/25 115/12
121/23 121/24 141/1 141/4 141/7
151/5 167/14 170/21 170/24
174/22 178/24 186/14 193/19
202/20 204/24 210/1 211/19
231/10 244/25 245/1
wanted [24] 16/15 18/10 20/15
21/10 21/10 21/11 21/14 21/25
105/1 106/24 109/1 119/15 123/19
137/1 137/11 137/18 140/22 159/4
159/8 164/20 178/21 187/1 214/13
245/20
wants [3] 34/1 128/23 171/2
warrant [27] 80/3 80/6 80/21
81/22 84/18 84/20 84/21 85/1
85/2 85/4 85/7 85/10 90/6 102/3
102/4 109/6 115/7 119/16 121/7
139/24 156/9 157/20 158/20
163/12 163/14 163/25 184/6
warrants [7] 74/7 85/12 111/22
126/23 200/1 205/7 207/24
wasn't [18] 24/22 26/5 27/13 31/15
138/24 149/14 153/6 168/15
185/21 186/12 197/16 201/21
202/18 210/25 215/11 217/6
228/15 236/21
waste [2] 43/5 204/24
watch [3] 11/14 136/11 243/6
watched [2] 95/8 95/14
watching [2] 193/2 242/19
water [10] 8/22 9/6 10/22 14/16
14/20 14/21 35/5 35/6 35/11
40/14
Wausau [1] 84/12
way [41] 6/24 14/2 17/4 17/22
19/19 22/13 22/19 25/13 28/3
34/21 44/12 52/18 53/9 72/20
73/10 80/10 94/25 97/16 100/19
108/17 116/2 125/14 139/13 141/9
143/25 144/4 148/8 151/25 165/7
178/7 190/21 190/22 205/24 207/9
217/12 219/2 219/3 220/4 227/5
233/19 239/14
ways [2] 43/21 44/6

we [379]

we'll [26] 5/3 29/9 29/12 30/24
76/25 77/2 77/21 101/12 118/22
129/1 129/4 130/14 131/5 168/7
176/9 177/21 186/16 194/16
195/19 214/23 222/11 232/15
234/16 235/2 244/9 245/10
we're [51] 4/3 10/19 15/19 19/18
21/22 52/15 55/5 63/8 68/13
71/16 72/4 72/5 74/2 78/15 80/11
80/12 81/1 82/8 82/13 93/22
94/15 94/22 102/4 103/10 106/22
118/13 120/17 121/25 122/2 122/4
127/22 130/15 146/1 156/16
169/12 172/25 173/3 190/12
193/23 197/21 205/20 221/10
226/16 226/20 235/18 238/15
238/17 239/20 242/11 244/17
246/9
weapons [1] 117/23
wearing [3] 189/17 224/19 228/6
weather [12] 7/12 22/14 22/19
23/7 58/4 59/10 91/1 91/4 91/5
91/8 95/24 104/2
web [1] 243/11
websites [1] 243/10
Wednesday [4] 126/8 126/19
126/23 184/3
weeds [2] 227/14 227/14
week [18] 42/22 72/10 73/19
118/14 122/1 126/15 128/6 132/19
150/17 168/5 168/8 185/1 186/10
195/1 195/17 199/12 201/18
203/14
weekend [4] 86/8 242/14 243/15
246/7
weekly [1] 8/7
weeks [6] 61/2 165/12 165/16
167/11 220/6 220/25
Wendling [2] 182/11 183/7
went [49] 18/3 19/1 19/4 23/11
31/10 32/13 48/10 61/2 78/24
80/21 86/10 95/15 105/6 105/18
105/22 108/24 109/25 110/4 110/7
110/8 112/14 114/10 114/13
117/13 118/7 121/5 123/1 127/15
137/25 138/23 150/2 159/21
159/25 160/8 166/22 168/7 177/23
179/1 180/12 183/7 183/10 183/18
183/20 183/21 188/11 207/9
207/10 217/7 225/22
weren't [10] 11/4 26/2 90/12 155/3
163/9 163/10 181/20 203/11
216/20 218/16
west [7] 32/16 32/18 79/12 151/14
151/15 151/20 191/1
westerly [1] 94/17
what's [22] 12/18 16/4 25/15 38/22
41/24 42/17 78/13 97/9 97/19
98/3 98/12 98/23 99/23 100/6
113/2 121/11 130/22 142/5 173/4
176/11 226/18 239/18
whatever [8] 41/9 42/2 111/4
130/1 148/21 164/6 190/22 191/8
wheel [5] 19/23 19/23 31/25
116/14 116/15
whenever [2] 21/20 218/3
wherever [1] 125/8
whether [34] 5/25 26/25 40/13
50/18 51/9 51/15 51/18 52/21
55/2 59/13 59/22 70/9 77/8 111/5
114/22 127/13 132/16 133/9 146/8
147/23 151/20 157/10 175/13

W

whether... [11] 182/1 182/22
 199/12 212/3 213/1 213/3 216/5
 220/13 220/14 221/2 221/9
while [9] 42/5 67/25 79/3 101/5
 129/22 189/20 190/15 197/7
 238/20
white [3] 25/8 25/25 149/8
who's [2] 144/7 206/15
whoever [3] 133/9 133/10 217/9
whole [9] 7/14 14/2 117/21 138/10
 163/1 176/21 237/12 237/14
 237/15
whose [3] 51/12 57/19 212/21
Wiegert [14] 69/13 111/10 132/13
 139/22 153/17 156/2 156/8 156/18
 157/19 196/18 238/16 240/12
 240/15 241/1
wilderness [5] 8/18 13/9 13/13
 13/16 13/20
WILLIAM [4] 2/15 222/19 222/24
 238/3
Willis [1] 1/9
wind [4] 32/11 34/6 91/15 97/17
window [1] 231/17
windshield [1] 97/11
windy [1] 22/16
Winnebago [3] 67/8 107/6 119/6
wire [3] 230/3 232/17 233/2
WISCONSIN [28] 1/1 1/3 1/12 1/14
 1/16 4/2 9/14 10/5 29/25 39/22
 64/1 64/7 64/8 78/20 78/21 83/7
 84/10 84/11 104/17 123/12 138/11
 188/5 223/6 224/4 235/14 235/20
 247/1 247/6
wish [3] 27/9 222/16 244/24
withdraw [1] 202/13
withdrawn [1] 202/12
within [13] 6/16 6/22 7/6 7/17
 9/14 16/14 24/11 24/12 54/7 61/8
 64/16 132/6 140/23
without [14] 18/2 28/23 46/1
 59/18 60/23 116/20 118/15 136/4
 144/8 147/4 168/10 185/25 191/7
 198/20
withstanding [1] 131/4
witness [28] 4/15 4/19 63/1 63/9
 63/13 63/17 78/1 81/14 108/10
 108/18 113/2 131/17 134/10
 153/13 165/11 165/16 172/3
 222/10 222/12 222/16 222/20
 230/14 234/18 234/20 235/5
 242/10 242/11 245/11
witnesses [13] 2/2 80/1 116/19
 118/13 130/17 130/20 166/4
 166/13 166/20 167/10 214/24
 217/25 219/13
woman's [2] 152/22 206/22
women's [1] 183/19
wonder [1] 217/12
wondering [1] 79/14
wood [2] 31/16 94/19
wooden [1] 207/7
woods [1] 13/23
word [6] 10/15 34/5 34/7 35/15
 154/16 165/4
words [10] 8/12 11/5 20/24 36/18
 87/2 102/19 105/16 110/17 213/14
 236/17
work [18] 5/20 5/22 7/8 7/20 8/8
 8/19 22/23 23/20 23/22 24/16
 47/7 55/21 56/21 57/3 59/19

59/21 69/11 73/11
worked [27] 8/4 10/1 10/23 14/4
 14/11 18/18 23/12 26/17 32/18
 37/15 48/2 55/15 55/23 57/7
 58/20 59/3 59/18 92/8 92/9 92/13
 103/8 103/9 103/11 122/24 122/25
 127/2 149/7
working [18] 7/11 9/12 11/11
 20/10 34/24 39/20 39/21 40/9
 58/12 59/12 76/17 92/4 93/20
 111/17 116/2 216/20 217/7 243/14
works [2] 10/5 19/19
world [1] 39/22
worried [1] 20/6
worry [1] 42/11
worse [1] 48/24
worsened [1] 23/11
worth [1] 72/6
wouldn't [7] 144/5 154/7 174/22
 178/17 179/5 193/3 240/15
wreck [1] 48/22
wrecked [3] 48/14 48/25 49/3
wrecker [8] 67/23 68/19 96/13
 96/14 96/15 96/21 100/24 101/1
written [4] 85/16 228/19 234/6
 234/7
wrong [7] 11/6 11/7 61/19 138/23
 146/22 216/25 240/17
wrongful [2] 138/3 138/21
wrote [1] 212/25

Y

yard [35] 16/6 16/14 22/11 23/21
 48/2 48/3 48/4 48/12 49/2 49/7
 66/1 66/18 76/16 78/18 82/21
 82/23 90/19 90/24 92/8 92/10
 94/18 105/6 105/11 105/18 123/20
 123/21 126/10 127/1 127/2 128/11
 132/7 161/8 223/14 236/8 236/11
yards [2] 48/8 86/15
year [5] 7/19 9/2 9/3 12/7 42/23
years [22] 6/4 9/7 9/15 9/17 10/2
 11/13 37/15 37/19 38/11 38/12
 38/13 39/13 40/4 54/19 64/5 68/3
 134/21 135/2 138/4 149/7 170/4
 219/1
yesterday [3] 87/25 107/3 189/6
yet [15] 23/13 32/11 67/25 108/6
 112/17 126/6 129/18 130/18
 133/23 134/24 141/20 153/6
 163/20 191/13 246/8
you're [6] 72/24 80/8 146/3 151/16
 178/2 244/17
yours [1] 58/17
yourself [7] 148/3 151/6 151/6
 157/21 184/16 195/2 218/17
Yup [1] 226/9

Z

Zander [1] 214/23
Zipperer [3] 215/9 215/14 215/17
zoom [7] 150/5 162/2 176/17
 176/20 189/23 231/11 232/4